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Report of the Working Group of Experts on People of African Descent on its nineteenth and twentieth sessions

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group of Experts on People of African Descent on its nineteenth and twentieth sessions, prepared pursuant to Council resolutions 9/14, 18/28 and 27/25. During its nineteenth session, held in Geneva from 28 November to 2 December 2016, the Working Group held private discussions. Its twentieth session, held in Geneva from 3 to 7 April 2017, focused on the theme "Leaving no one behind: people of African descent and the Sustainable Development Goals". The Working Group concluded that the Sustainable Development Goals provide a comprehensive framework to effectively combat the racism, racial discrimination, xenophobia, Afrophobia and related intolerance that people of African descent face every day around the world, and urged Member States to make a genuine commitment to the standard of leaving no one behind by, inter alia, collecting disaggregated data and devoting special attention to the human rights of people of African descent through the preparation of specific programmes of action, including social programmes for the implementation of the programme of activities for International Decade for People of African Descent.

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Report of the Working Group of Experts on People of African Descent on its nineteenth and twentieth sessions*

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* The annex to the present report is circulated as received, in the language of submission only.

I. Introduction

1. The Working Group of Experts on People of African Descent held its nineteenth session from 28 November to 2 December 2016 and its twentieth session from 3 to 7 April 2017 at the United Nations Office at Geneva. The present report is submitted in accordance with Human Rights Council resolutions 9/14, 18/28 and 27/25, in which the Council requested the Working Group to submit an annual report on all activities relating to its mandate. The report focuses mainly on the deliberations at the twentieth session of the Working Group.

2. Representatives of Member States, the Holy See, international organizations, regional organizations and non-governmental organizations (NGOs) and invited panellists participated in the twentieth session (see annex).

II. Organization of the twentieth session

A. Opening of the session

3. Mona Rishmawi, Chief of the Rule of Law, Equality and Non-Discrimination Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR), in her opening statement expressed appreciation for the Working Group's work. She stated that the Sustainable Development Goals offered clear opportunities to close the gaps for the most marginalized and those facing racial discrimination, and that prioritizing people of African descent in development processes could have tremendous benefits for addressing disparities and racial injustice. She welcomed the timeliness of the discussions to influence new Sustainable Development Goals-based policies and development plans that were being formulated.

4. Ms. Rishmawi reaffirmed the commitment of the United Nations High Commissioner for Human Rights, as the Coordinator of the International Decade, to advancing the rights of people of African descent.

B. Election of the Chair-Rapporteur

5. Sabelo Gumedze was elected Chair-Rapporteur of the Working Group.

6. Ricardo Sunga, the outgoing Chair-Rapporteur, thanked the other members of the Working Group and the other participants for their support, adding that the Working Group would continue to strive to strengthen the mandate that had been entrusted to it.

7. Accepting his new role as Chair-Rapporteur, Mr. Gumedze thanked the other experts for his election and the participants for their support.

8. The representatives of Botswana, Brazil, Colombia and South Africa and of the European Union expressed their appreciation to Mr. Sunga for his work during his tenure as Chair-Rapporteur and congratulated Mr. Gumedze on his election.

C. Organization of work

9. The Working Group adopted the agenda (A/HRC/WG.14/20/1) and programme of work.

III. Update and briefings on activities undertaken by the Working Group in the past year

10. Mr. Gumedze reminded participants that the Working Group had submitted its annual report to the Human Rights Council at its thirty-third session (A/HRC/33/61 and

Add.1 and 2), including reports on its country visits to Italy and the United States of America, and had engaged in a constructive dialogue with Member States. The Working Group also submitted its annual report to the General Assembly at its seventy-first session (A/71/297) and participated in an interactive dialogue with the Third Committee.

11. At its nineteenth session, the Working Group had held a closed meeting at which members reviewed the Working Group's methods of work, prepared for its upcoming session, communications and country visits, and held meetings with various stakeholders and representatives of OHCHR. The Working Group had decided to liaise more intensively with financial and developmental institutions.

12. The Working Group had conducted country visits to Canada (17-21 October 2016) and Germany (20-27 February 2017). At the end of each visit, the Working Group released press statements.[1] Reports of the visits would be submitted to the Human Rights Council at its thirty-sixth session. He thanked the Governments of Canada and Germany for their invitation and for their assistance before, during and after the visits. He also thanked the representatives of NGOs and the people of African descent with whom the Working Group met.

13. The Working Group had continued to actively promote and participate in activities to interact with civil society and assist stakeholders in the implementation of the programme of activities for the International Decade for People of African Descent. On 18 March 2016, Ahmed Reid delivered the keynote at the General Assembly on the occasion of the International Day for the Elimination of Racial Discrimination under the theme "Challenges and achievements of the Durban Declaration and Programme of Action-15 years after". Mr. Gumedze and Mr. Reid participated on behalf of the Working Group in a meeting on the International Decade organized by the Government of the Netherlands, held in Amsterdam on 12 December 2016. Mireille Fanon Mendes-France made statements and participated in events, using those opportunities to raise awareness and call for the implementation of the programme of activities of the International Decade.

14. The Government of Guyana had invited the Working Group to visit the country from 2 to 6 October 2017. The Government of Spain also extended an invitation to visit the country in February 2018. The Working Group expressed its appreciation to all the Governments that had cooperated with the mandate and invited it to undertake country visits. The Working Group had requested invitations to visit other countries, and emphasized the importance of confirming dates and allowing visits to be planned and to proceed on schedule.

15. During the reporting period, and in accordance with its mandate, the Working Group had sent five communications regarding allegations of human rights violations to Colombia, France, India and the United States. The communications sent and replies received were included in the joint communications reports of special procedure mandate holders submitted to the Council (A/HRC/36/66, A/HRC/35/44 and A/HRC/34/75). The Working Group urged States to seriously address human rights violations faced by people of African descent and to take effective measures to end impunity and structural racism.

16. The Working Group had issued a number of media statements during the reporting period. On the occasion of the International Day for the Elimination of Racial Discrimination, the Working Group, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Committee on the Elimination of Racial Discrimination issued a joint statement urging States to act against racial profiling and incitement to racial hatred. On 8 July 2016, the Working Group condemned the killings in the United States of Philando Castile in Minnesota and Alton Sterling in Louisiana at the hands of the police, and the killing of five police officers in downtown Dallas. On 3 November, the Working Group called on development and financial institutions to increase their efforts to combat racism in implementing the *programme of activities for the Decade*. On 14 November, the Working Group joined a

[1] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20732&LangID=E and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21233&LangID=E.

number of other mandate holders calling upon the United States to immediately halt the execution of Kevin Cooper. On 2 December, the Working Group joined several mandate holders calling upon Governments to move from rhetoric to action and urgently honour their political and financial commitments to development, marking the thirtieth anniversary of the adoption of the Declaration on the Right to Development. On 5 January 2017, the Working Group issued a statement supporting a school district which had removed an "offensive" textbook on slavery from classrooms.

17. A delegation of the Working Group had met with development and financial institutions in New York from 2 to 4 November 2016, under its mandate to elaborate proposals for the elimination of racial discrimination and to contribute to development programmes for people of African descent.[2] The delegation advocated for prioritization of programmes and projects specifically tailored for combating racial discrimination against people of African descent in the implementation of the 2030 Agenda for Sustainable Development and the Decade. The Working Group specifically called for the following actions to be taken: (a) devoting special attention to the human rights situation of people of African descent, gathering data disaggregated on the basis of race and other variables following a human rights-based approach, analysing disparities and preparing specific programmes of action to address gaps and improve their human rights situation; (b) designing special projects, in collaboration with people of African descent, to support their initiatives at the community level. The Working Group offered to assist and facilitate the exchange of information and to connect people of African descent with financial and development institutions for this purpose. It would share its country visit reports and request development and financial institutions to assist Member States and people of African descent in the implementation of its recommendations; and (c) allocating additional investments to people of African descent in health-care systems and for education, housing, electricity, drinking water and environmental control measures and promoting equal opportunities in employment, as well as other affirmative or positive measures and strategies within the human rights framework. The delegation met with the Assistant Secretary-General for Human Rights, the United Nations Development Group Human Rights Working Group, the United Nations Population Fund, the Department of Public Information, the Ford Foundation, and members of civil society, the media and other United Nations anti-racism experts. The meetings generated different avenues for further engagement with key partners in this area.

IV. Summary of deliberations

Thematic analysis: development and people of African descent

18. The Working Group devoted its twentieth session to the theme "Leaving no one behind: people of African descent and the Sustainable Development Goals".

19. The first panel discussion focused on Sustainable Development Goal 1 on ending poverty in all its forms everywhere. Ms. Fanon Mendes-France gave a presentation providing examples of the types of inequalities faced by people of African descent in different parts of the diaspora, including France and its overseas territories, specifically the French Caribbean, which had led to poverty. She highlighted the importance of data collection, as very little data were available for assessing the impact of poverty and inequality on people of African descent. People of African descent had experienced poverty since the time of the trade in enslaved Africans and it was one of the consequences of the way in which the newly freed people had been treated after abolition. The lack of will to repair the order which had instituted racialization kept them in a state of extreme precariousness, the consequences of which were still visible today. They were the first to be affected by policies that caused inequalities, including through globalization and structural racism. She provided several socioeconomic indicators pointing to the growing inequalities

[2] The Working Group also held meetings in Washington, D.C. for that purpose on 27 and 28 June 2016.

in the world which, without change, threatened to disrupt societies. Those most affected by the exclusion and segregation produced by that situation were young people. As identified in the Durban Declaration and Programme of Action, colonialism, its effects and the persistence of related structures and practices were among the factors contributing to lasting social and economic inequalities in many parts of the world, and it was imperative to remove all obstacles by establishing a new economic order based on the principle of non-discrimination.

20. Sara Sekkenes, of the United Nations Development Programme (UNDP), noted that human rights values such as equality and non-discrimination were at the heart of the 2030 Agenda for Sustainable Development. The Millennium Development Goals had focused mainly on a limited set of economic and social rights, and the Sustainable Development Goals, which had inequality at their centre and promised to leave no one behind, included a commitment to fight discrimination and encompassed civil, political, economic, social and cultural rights. Ms. Sekkenes highlighted the work of UNDP based on its vision to assist States to achieve the simultaneous eradication of poverty and a significant reduction in inequalities and exclusion, with a focus on developing sustainable development pathways, strengthening inclusive and effective democratic governance and peacebuilding, and building resilience. She provided detailed examples of the Programme's work in supporting the promotion and protection of the human rights of people of African descent at the country level in Colombia, Ecuador, Guatemala and Honduras, as well as other initiatives in the Latin American region.

21. Gay MacDougall, member of the Committee on the Elimination of Racial Discrimination, spoke on Sustainable Development Goal 1 and on Goal 10 on reducing inequality within and among countries. She highlighted the importance of the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent, in which the Committee recognized that racism and structural discrimination against people of African descent, rooted in the infamous regime of slavery, were evident in the situations of inequality affecting them. The Committee had called for robust special measures and affirmative action programmes to be instituted, and urged that States adopt comprehensive anti-discrimination legislation and strong enforcement institutions with procedures that could be initiated by victims and their representatives. One of the key challenges in realizing the 2030 Agenda goal of leaving no one behind was with respect to indicators and data disaggregation, as only such data would give critical insight into the degree to which minorities, and specifically communities of people of African descent, were benefiting or being ignored. She further emphasized the need for a detailed mapping of people of African descent and corresponding socioeconomic data. The Inter-Agency and Expert Group on Sustainable Development Goal Indicators had not made it an explicit requirement to apply disaggregation across the entire indicator set, thereby posing a challenge in acquiring a real picture in relation to the status of poverty, socioeconomic condition and inequalities faced specifically by people of African descent.

22. The last speaker, Fabiana Del Popolo of the Economic Commission for Latin America and the Caribbean (ECLAC), recalled that there was a large and diverse population of people of African descent in Latin America and the Caribbean, with its own demographic, territorial and sociopolitical perspectives but united by the common denominator of discrimination and structural racism owing to the legacy of the transatlantic trade in enslaved Africans by the European conquerors. She pointed to the importance of data collection initiatives in the region as a fundamental tool for the design and evaluation of policies for the promotion of the human rights of people of African descent. Twelve out of 13 countries had included data related to people of African descent in their censuses carried out since 2010, and 17 out of 20 Latin American countries intended to include identification of people of African in future censuses. Statistics on the economic condition of people of African descent were available in four countries in the region; in 2014, the number of people of African descent living in poverty as compared with people not of African descent was almost three times higher in Uruguay, more than double in Brazil and around 50 per cent higher in Ecuador and Peru. Despite advances in the region in terms of data collection, it was necessary to further disaggregate indicators and data in the implementation of the 2030 Agenda. She concluded by stating that ECLAC would continue to support the countries of the region in those matters, through technical assistance, the

production of disaggregated information, the generation of updated knowledge and the strengthening of national capacities for the analysis of such information.

23. During the interactive dialogue, Michal Balcerzak reported on the Working Group's engagement with development and financial institutions. Ms. Fanon Mendes-France and Ahmed Reid asked Ms. Sekkenes to elaborate on how UNDP intended to address the concerns of people of African descent without disaggregated data. Ms. Sekkenes responded that more needed to be done to invest in the capacities to develop indicators and disaggregated data. Mr. Reid asked Ms. Fanon Mendes-France whether reparations could be included as part of the strategy to leave no one behind. She said that there was a way to incorporate reparations, including by addressing issues such as the distribution of land and property, and reparations could take the form of full recognition of the narrative of the past and the legacy of enslavement. The representative of South Africa, speaking on behalf of the African Group, called upon the Working Group to develop tangible recommendations to indicate ways to move forward with the Sustainable Development Goals, with reference to relevant information from the Durban Declaration and Programme of Action in relation to poverty. Representatives of civil society commented on the centrality of structural racial discrimination, access to food, health, education and employment, and discrimination in the criminal justice system faced by people of African descent.

24. The second panel focused on Sustainable Development Goal 10 and on Goal 5 on achieving gender equality and empowering all women and girls. Mr. Sunga stated that people of African descent, and especially women and girls, lived at the margins of the global society. As a result of its country visits the Working Group had reached the inescapable conclusion that people of African descent lagged behind disproportionately in terms of the enjoyment of their civil and political and their economic, social and cultural rights. The language of the Sustainable Development Goals failed to consider people of African descent as a specific victim group. He offered a number of useful indicators on Goals 5 and 10 in relation to people of African descent, including forms of reparatory justice for past historical injustices, including the legacy of enslavement and genocide; number of convictions for hate crimes, including various forms of hate speech and violence against people of African descent; prevalence of racial profiling such as carding and stop and frisk practices against people of African descent; disproportionate prevalence of solitary confinement of people of African descent; number of people of African descent who were members of the judiciary and prosecution services; number of police responses to mental health calls which included a psychiatrist or psychologist as part of the responding team; good educational outcomes up to university level for people of African descent; number of families of African descent who owned their own homes; number of women of African descent who were able to retain custody of their children and who were not deprived of custody for supposed mental health issues or other similar concerns; and prevalence of culturally appropriate health care for women and children of people of African descent.

25. Hillary Gbedemah, member of the Committee on the Elimination of Discrimination against Women, spoke about the convergence of Goal 10 and the Committee, examining the impacts on racial discrimination of persons of African descent living in the African diaspora. She pointed to several issues, including historical antecedents, terminology, data collection and the concept of equality vs. equity, as being key issues for people of African descent. She drew attention to the convergence of indicator 10.3 with article 7 of Convention on the Elimination of All forms of Discrimination against Women and indicator 10.6 with article 8 of the Convention. In conclusion, she drew upon the Committee's general recommendations No. 34 (2016) on the rights of rural women and No. 33 (2015) on women's access to justice to highlight the importance for people of African descent of ensuring access to justice and combating gender bias and stereotyping.

26. Carlos Quesada, of the International Institute on Race, Equality and Human Rights, said that although the Latin American and Caribbean region had achieved considerable success in reducing extreme poverty over the last decade, it still had high levels of income and wealth inequality which had stymied sustainable growth and social inclusion. Afro-descendants comprised 30 per cent of the population (more than 300 million people) but, according to numerous organizations, the Afro-descendant population was

disproportionately concentrated in the poorest areas with the highest housing deficit, and suffered greater exposure to crime and violence and had higher levels of unemployment. In addition, the situation of structural discrimination was confirmed by the indicators on access to housing, loans, quality health care and education, life expectancy and nutrition status, among others. There was a strong connection between poverty and race and between race and class; these categories intertwined and deepened the serious situation of Afro-descendant people, including men, women, youth, people with disabilities and Afro-descendant lesbian, gay, bisexual, transgender and intersex people. Racial profiling, excessive use of force and racial discrimination in the judicial system had an important impact on the inequality affecting people of African descent in the region. He concluded by calling upon Member States in the region to ratify the Inter-American Convention against Racism, Racial Discrimination and Related Intolerance and the Inter-American Convention against All Forms of Discrimination and Intolerance.

27. During the interactive session, Mr. Gumedze asked Ms. Gbedemah how the Committee on the Elimination of Discrimination against Women could play an important role in uplifting women of African descent in the diaspora. Mr. Reid asked Mr. Quesada about his thoughts on the Caribbean Community's 10-point action plan on reparations and whether it could help in eliminating disparities within the region. In response, Ms. Gbedemah said that she had been encouraged by States' acceptance of the recommendations adopted by the Committee. Mr. Quesada said that the 10-point plan had not been well communicated to the broader region, although Spain had issued an apology to indigenous communities. The representative of Colombia shared information on measures taken in Colombia to improve the economic living conditions of communities of people of African descent. The representative of Brazil reported that Brazil had adopted a national security plan with a focus on homicide levels, particularly among Afro-Brazilians. The representative also reported on the implementation of affirmative action programmes to ensure equitable racial representation in education. The representative of Cuba stated that attainment of Sustainable Development Goal 10 required international cooperation and a fairer economic order. The representative of the European Union said that all the Goals were mutually reinforcing, but Goal 10 was particularly relevant and gender issues must be promoted in all relevant policy actions. Ms. Gbedemah called for development aid to be linked to equality for women, while Mr. Sunga called for establishing linkages between development aid and reparatory justice, as well as participation of people of African descent in the formulation of aid policies. Representatives of civil society raised a number of issues pertaining to the impact of the Mental Health Act on women in the United Kingdom of Great Britain and Northern Ireland, violence and disappearances of women in the United States, and the plight of refugee and migrant women in Europe and their respective challenges.

28. The third panel discussion covered Sustainable Development Goal 4 on ensuring inclusive and quality education for all and promoting lifelong learning, along with Goal 8 on promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Mr. Reid emphasized the relevance of the strategy on inclusive education outlined in the Durban Declaration and Programme of Action, as racism, racial discrimination, Afrophobia and related intolerance were endemic to many education systems globally, leading to severe inequalities in access to and retention of schooling, which directly violated the principles of human rights and dignity. A large number of the Goals would not be attained without inclusive education, just as racism and racial/ethnic discrimination would continue to function as structural and systemic barriers to sustainable development. He concluded by pointing out that unequal access to key educational resources, including skilled teachers and quality curriculums, different learning opportunities and the discriminatory nature of the disciplining of children of African descent all had an impact on their educational attainment.

29. Ms. Gbedemah said that education was very important to her Committee. She focused her presentation on the right of access to education, rights within education and rights through education. The Committee had called for increased opportunities for indigenous women to gain access to educational institutions and public institutions. She also pointed to existing rural-urban differentials, class differentials and gender differentials that had contributed to differences in educational outcomes for girls. Individuals, because

of their race or gender, were discriminated against in the assessment of their educational attainments (including certificates) and consequently were not considered in awarding employment and advancement opportunities.

30. Martin Oelz, from the International Labour Organization (ILO), highlighted the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which was the organization's main instrument on the subject, along with the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The contributions by ILO to the report on the Decade took into account the goals and targets of the 2030 Agenda. The report gave an overview of the situation of persons of African descent in the world of work, and described ILO action in several areas: awareness raising, strengthening dialogue around fundamental principles and rights at work; building reliable statistics and data collection; a focus on the rural and informal economy; and building international alliances to address the situation of people of Africa descent. He concluded by providing the perspective of ILO in addressing discrimination through the Sustainable Development Goals with interventions in the following areas: improving anti-discrimination legislation, its enforcement and access to justice; addressing multiple forms of discrimination; enhancing enterprise-level policies and practices to prevent and address discrimination based on race, colour, ethnicity or other relevant grounds; encouraging policy-oriented and evidence-based research to underpin policy debates and development; promoting access to decent work in key occupations and economic sectors, including through transitions to the formal economy and universal access to a social protection floor; building broad alliances at the national, regional and international levels to promote ownership and support for diversity and rejection of racial discrimination; and ensuring that organizations of persons of Africa Descent and relevant civil society organizations could participate in follow-up and review of the 2030 Agenda.

31. During the interactive session, Ms. Fanon Mendes-France asked Mr. Reid about narrating the legacy of the trade in enslaved Africans and colonialism in an accurate manner. Mr. Reid noted that quite a few Caribbean historians had spent time rewriting the history of the Caribbean; however, Eurocentric materials were still being circulated in schools. Currently, Caribbean students had to travel to the former colonial countries to access materials related to the region. The repatriation of documents was a suggested solution. Technology transfer was another suggestion related to reparations. The representative of South Africa emphasized the importance of access to education and of quality education. The representative of Cuba spoke of the importance of international cooperation, which applied to education as well. The representative of Barbados also commented on the importance of teaching about local history prior to the transatlantic trade in enslaved Africans. Civil society representatives commented on the impact of litigation on the lack of funding for education, human rights education for children and the importance of the recognition of history in education. In conclusion, Mr. Reid reminded the civil society representatives to be engaged in the high-level political forum on sustainable development scheduled to take place under the auspices of the Economic and Social Council in July 2017.

32. The fourth panel focused on the topic of Goal 16 on promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. Mr. Gumedze stated that Goal 16 was an important tool or agent of change for advancing the mandate of the Working Group. The violence to which people of African descent were subjected was usually a component of racist crimes. One way of reducing such crimes was by improving social cohesion, especially in culturally diverse societies. For example, the Government of Belgium had created an inter-dialogue commission in 2004 with the aim of improving social cohesion in Belgium's culturally diverse society. Mr. Gumedze gave other examples of similar measures to address access to justice for people of African descent that the Working Group had proposed following country visits.

33. Justin Hansford, of the St. Louis University School of Law, spoke about the achievements of the Black Lives Matter movement in the United States as well as about continuing manifestations of racial discrimination in the criminal justice system in the country. The disproportionate impact of racial violence and police brutality on people of African descent in the United States was compounded by the fear that the new

administration would do away with the positive measures that had been undertaken, as pointed out by the Working Group following its country visit in January 2016. In conclusion, Mr. Hansford suggested that the Working Group consider adopting among its recommendations the goal of cutting Black incarceration in half by the end of the Decade, declaring mass incarceration a crime against humanity and demanding reparations for mass incarceration.

34. Domenica Ghidei Biidu, of the European Commission against Racism and Intolerance, described the Commission's work in combating racial discrimination in Europe through its periodic country reporting. In those reports it had provided a number of recommendations to countries in the region, including on racial profiling and the use of disproportionate force by police; addressing negative racial stereotypes faced by people of African descent; racism in sports; hate speech, including hate speech on the Internet; police violence; racist and xenophobic speech by politicians; racist violence towards migrants and asylum seekers; and discrimination in education, housing, health and employment.

35. During the interactive session Mr. Balcerzak asked the panellists how the Working Group could enhance cooperation with organizations such as the Commission and enhance its outreach with civil society. Ms. Fanon Mendes-France asked why the Commission did not use the term Afrophobia. In response, Mr. Hansford suggested focused recommendations and greater engagement with State actors and civil society. Ms. Ghidei Biidu mentioned concerns over whether the term Afrophobia fully encapsulated the lived experiences of the people it attempted to encompass. The representative of the European Union outlined steps that must be taken to prevent discrimination in the criminal justice system and to prevent discrimination in arrests and sentencing, and expressed keen interest in multilateral dialogue to discuss measures that could be taken to eliminate discrimination. The representative of Brazil asked the panellists about ways to address structural racism in police forces in an effective manner. Mr. Hansford responded by recommending that criminal charges be brought and financial penalties imposed for racial discrimination, whether practised by individuals or private or public entities; such penalties should be available at the federal and state levels. Several civil society representatives from different parts of the world provided examples of racial discrimination and violence faced by people of African descent in the criminal justice system and by agents of law enforcement.

36. The fifth panel discussion focused on the topic of Sustainable Development Goal 3 on ensuring healthy lives and promoting well-being. Mr. Balcerzak stated that the health problems and concerns of people of African descent ranged from the medical needs of children and youth of African descent living in underprivileged communities to adult populations being systematically discriminated against and neglected with respect to access to modern health care, to elderly people of African descent whose dignity and human rights were often undermined by a lack of proper geriatric medicine and care. Efforts to achieve the targets of Goal 3 with reference to people of African descent should address particular areas in which the health and well-being of people of African descent were put at specific risk owing to social, cultural or even historical factors. Enslavement and colonial and post-colonial injustices as well as constant struggles with structural racism, intolerance and Afrophobia had had a direct influence on the health and well-being of people of African descent. He concluded by urging State authorities, with appropriate reference to the aims of the Decade and due regard for Goal 3, to prioritize the issues of the health care and well-being of people of African descent in their health policies and programmes.

37. Matilda MacAttram, Director of Black Mental Health UK, focused her presentation on mental health as both a human right and a social justice issue. While mental health was not specifically mentioned in the Sustainable Development Goals, it was one of the leading causes of morbidity. In the United Kingdom, people of African descent not only faced disproportionate rates of incarceration but, as police data had indicated, were much more likely to be referred for psychiatric evaluation while in custody. People of African descent were nine times more likely than the rest of the population to be admitted to psychiatric hospitals in England and Wales, although they did not have a higher prevalence of mental ill-health. She concluded by calling for support for banning the use of tasers, particularly in psychiatric settings.

38. Sandra Del Pino, of the Pan American Health Organization/World Health Organization (PAHO/WHO), described the work of PAHO on the health situation of people of African descent in the Latin American and Caribbean region, including achievements, challenges and opportunities. Despite advances in the inclusion of self-identification variables in population and housing censuses, lack of quantitative and qualitative data remained a major barrier to understanding the health situations of people of African descent in the region, including the determinants. Such data were needed to formulate adequate responses and ensure accountability. In addition to structural racial discrimination, people of African descent faced other social determinants of health such as lower educational attainment, lack of access to education and lack of health infrastructure in the areas where they lived, among others, which placed the Afro-descendant population of the region at a disadvantage. PAHO had identified four key areas to address the determinants of health — gender, equity, human rights and ethnicity — in order to reduce the inequities in health, and had adopted a regional plan of action to address inequalities in health aimed at people of African descent.

39. During the interactive session Ms. Fanon Mendes-France emphasized the need to analyse how the transatlantic trade in enslaved Africans had continued to affect the overall health of people of African descent. The right to health of people of African descent was directly related to the right to their traditional lands, which had been expropriated and contaminated by multinational companies; that in turn had exposed them to health hazards. At the same time, urban gentrification of areas where people of African descent lived also had an adverse impact on their overall health and well-being. A representative of civil society highlighted the importance of access to alternative, traditional and complementary medicine that was prevalent in Africa.

40. A special panel was held on the International Decade for People of African Descent. Ms. Fanon Mendes-France mentioned that while the Decade was an important achievement, it was already in its third year and therefore there was a need to move towards undertaking major efforts to fundamentally challenge structural racial discrimination, including by organizing an annual forum for people of African descent that would serve as a bridge between States and civil society and enhance support to and the visibility of the Decade by mobilizing funding.

41. Yvette Stevens, Chair of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, outlined the work of the Working Group and stated that despite efforts to combat racism, racial discrimination, xenophobia and related intolerance, enormous challenges remained in combating xenophobic attitudes, hate speech and crimes which were on the rise, severely affecting the enjoyment of their human rights by various groups, including people of African descent. She reported on the progress achieved on the establishment of a forum for people of African descent, and called for States and civil society to work together in ensuring that the forum yielded the positive results that everyone sought.

42. Taonga Mushayavanhu, Chair of the Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination, presented the work of the Committee in addressing the elaboration of complementary standards in the form of either a convention or additional protocol(s) to the Convention, filling the existing gaps in the Convention and providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred. Despite challenges in the development of complementary standards, the General Assembly had now called upon the Ad Hoc Committee to ensure the commencement of negotiations on the draft additional protocol to the Convention criminalizing acts of racist and xenophobic nature.

43. Michael McEachrane, representing a number of civil society activists and organizations in Sweden and Europe, recommended that the Working Group develop guidelines and other written materials for addressing enslavement and colonialism and their continuation in structural racial discrimination and inequities facing Africans and peoples of African descent worldwide. He also called for an increased focus on areas of reparatory justice, public education on the histories and present-day legacies of colonialism and

enslavement, redress for the impact of environmental degradation on Africans and people of African descent, and finding ways through information technology to empower and connect grass-roots and other civil society representatives who were interested in working together to seek recognition and justice for the legacies of enslavement and colonialism, in the context of the Decade.

44. During the interactive session, the representative of Mexico outlined the actions undertaken by Mexico in combating discrimination, including enacting new laws, building new institutions and adopting public policies. The representative of the United States articulated the need to ensure that domestic and international development policies were designed to leave no one behind. A representative of civil society called upon Member States to do more to implement the programme of activities of the International Decade, including through the implementation of the recommendations made by the various mechanisms such as the Working Group and the periodic tracking of the status of implementation of its recommendations. Another civil society representative called for greater efforts towards recognition of the historical legacy of the transatlantic trade in enslaved Africans during the Decade to enhance its profile.

45. A special consultation with civil society was held during the session to explore innovative ways for the Working Group to engage with civil society organizations and thereby strengthen its work. For the first time, civil society organizations were able to participate remotely: the consultation was webcast live and the recording could be viewed on United Nations Web TV. Contributions had been sought on social media platforms before and during the consultation and the input received had informed the discussions. Substantive discussions centred on three guiding questions exploring (a) key human rights concerns of people of African descent; (b) ways to strengthen the impact of the recommendations of the Working Group; and (c) priority human rights concerns which the Working Group should focus on in the next three years. Ms. Fanon Mendes-France, as a member of the Working Group, chaired the session and in her opening remarks recognized the essential work of civil society in the protection of the human rights of people of African descent and in bringing an end to structural racism.

46. Mr. Hansford reflected on the human rights concerns of people of African descent in the United States and around the world. He highlighted racial bias in the criminal justice system and mass incarceration in the United States. He emphasized the present moment of resistance, when people of African descent were rising up and stating that Black lives mattered, even at a time of renewed fervour for ethnic populism and White nationalism. Mr. Balcerzak highlighted key themes from civil society submissions, including disparities in law enforcement and in the criminal justice system; police violence, racial profiling and excessive use of force; impunity for racial killings, mass incarceration; protection of the right to vote; poverty and social exclusion; multiple aggravated forms of racial discrimination against women; and recognition in particular that the transatlantic slave trade was an atrocity. During the discussion, civil society members also called for a declaration on the rights of people of African descent, statistical data on persons of African descent, accountability and affirmative action. They also highlighted specific concerns of people of African descent in Colombia, France, Haiti, Spain and Switzerland.

47. Ms. MacAttram spoke about her work to address the ways in which the United Kingdom Mental Health Act was used against people of African descent and highlighted concerns relating to the Black British experience, in particular with regard to policing and mental health. Mr. McEachrane stated that people of African descent faced structural racism and inequity rooted in histories of colonialism and enslavement which must be addressed. A statement was made by a representative of the Leadership Conference on Civil Rights Education-United States of America on behalf of the United States Human Rights Network, in which the Network emphasized, inter alia, the human rights crisis in the criminal justice system in the United States, a product of continued discrimination and gross disparities in both the enforcement and the application of the law and resulting in racial profiling, the use of excessive force by law enforcement officials perpetrated with impunity, overrepresentation of African Americans in prison, disproportionate criminal penalties and the disproportionate rates of detention and deportation of immigrants of African descent. The political environment in the United States had inflamed individual

prejudices, strengthened oppressive institutions and emboldened those who would perpetrate acts of hate. In addition, the lack of recognition of and reparations for the centuries of harm to people of African descent must be addressed as a human rights imperative.

48. The Working Group welcomed suggestions to enhance its engagement with civil society, including through the production of educational materials which would link the themes of the Decade to existing human rights standards such as the Durban Declaration and Programme of Action and the International Convention on the Elimination of All Forms of Racial Discrimination; providing opportunities for the international community of civil society organizations and human rights defenders working to combat racism against people of African descent to connect across their different countries and regions; increasing accessibility through improved use of available communications technology; and making the demand for reparatory justice for people of African descent a central part of its work in the coming years. Mr. Reid also highlighted civil society submissions on this topic, including the suggestion that a session of the Working Group should be held outside Geneva to allow greater participation for civil society.[1]

V. Conclusions and recommendations

49. **The Working Group concluded its twentieth session on the theme "Leaving no one behind: people of African descent and the Sustainable Development Goals" and adopted the following conclusions and recommendations.**

50. **The Working Group thanked Member States and representatives of international organizations and civil society for their active participation. Ms. Fanon Mendes-France, attending her last session as a member of the Working Group, made a statement outlining her experiences, achievements and challenges during her tenure with the Working Group.**

A. Conclusions

51. **The Sustainable Development Goals and the International Decade for People of African Descent present opportunities for concrete action to advance the human rights of people of African descent. Structural racism, racial discrimination, Afrophobia, xenophobia and related intolerance are the root causes of inequality and must be addressed. The 2030 Agenda for Sustainable Development envisages a world of universal respect for equality and non-discrimination between and within countries, including gender equality, by reaffirming the responsibilities of all States to respect, protect and promote human rights, without distinction of any kind as to race, colour, sex, language, religion, political or other opinions, national and social origin, property, birth, disability or other status. In adopting the Goals, States have pledged that no one will be left behind and to reach the furthest behind first. The Goals are clearly focusing on the needs of the poorest and most vulnerable.**

52. **The Committee on the Elimination of Racial Discrimination in its general recommendation No. 34 recalled that racism and structural discrimination against people of African descent, rooted in the infamous regime of slavery, are evident in the situations of inequality affecting them and reflected, inter alia, in the following domains: their grouping, together with indigenous peoples, among the poorest of the poor; their low rate of participation and representation in political and institutional decision-making processes; additional difficulties they face in access to and completion and quality of education, which results in the transmission of poverty from generation to generation; inequality in access to the labour market; limited social recognition and**

[1] For more information see www.ohchr.org/EN/Issues/Racism/WGAfricanDescent/Pages/WGEPADConsultationCivilSociety2017.aspx.

valuation of their ethnic and cultural diversity; and a disproportionate presence in prison populations.

53. The Working Group has a mandate to monitor the human rights situation of people of African descent, elaborate proposals for the elimination of racial discrimination against people of African descent and contribute to development programmes for people of African descent. The Working Group is therefore well suited to advocate for prioritization of programmes specifically tailored to combat structural racism and racial discrimination against people of African descent in implementation of the 2030 Agenda and the Decade.

54. Implementation and monitoring efforts must assess progress in achieving results for people of African descent specifically. This requires, inter alia, consultation and participation of people of African descent at all stages of the process; the collection and analysis of disaggregated data that reveal the situation of the most disadvantaged groups and those groups affected by discrimination; and the development and implementation of specific programmes to address the human rights violations and disparities faced by people of African descent.

55. The Working Group concludes that inequalities are deeply entrenched in structural barriers that intersect and reinforce each other. Given their cross-cutting nature, the goals and targets will not be met if we do not acknowledge that racism, racial discrimination, Afrophobia, xenophobia and related intolerance will continue to function as structural and systemic barriers to sustainable development for people of African descent.

56. The Working Group concludes that growing income, wealth and other forms of inequality are threats to social stability. Without change, growing inequalities and segregation disrupt our societies, and people of African descent are the first victims. The eradication of structural racism is key for attaining the Sustainable Development Goals. This is further underlined in the Durban Declaration and Programme of Action, which emphasize that poverty, underdevelopment, marginalization, social exclusion and economic disparities are closely associated with racism, racial discrimination, xenophobia and related intolerance and contribute to the persistence of racist attitudes and practices, which in turn generate more poverty.

57. The Working Group is convinced that there is a clear connection between poverty and structural racism. Discrimination can both cause poverty and be a hurdle in alleviating poverty. It is not a coincidence that in countries with a history of the transatlantic trade in enslaved Africans, enslavement and colonialism, the poorest population group is composed of racial or ethnic minorities.

58. Women and girls of African descent suffer from multiple forms of discrimination on account of their race, gender, class and other identities. The Working Group agrees with the Afro feminist theory of intersectionality that women of African descent face multiple forms of oppression which are interconnected and cannot be addressed separately from one another. Women of African descent face discrimination in all areas of life and their specific human rights concerns must be addressed.

59. Education is one of the most powerful and proven vehicles for sustainable development. It is a mechanism through which economically and socially marginalized peoples, including people of African descent, can lift themselves out of poverty. It plays a vital role in empowering women, safeguarding children from exploitation, promoting human rights and democracy, protecting the environment, and fostering tolerance and respect between people.

60. The stark reality is that people of African descent continue to suffer from many multiple, aggravated and intersecting forms of discrimination. As a result, educational outcomes for people of African descent are a function of their unequal access to key educational resources, including skilled teachers and quality curriculums. There is copious evidence that in some States, students of African descent routinely receive dramatically different learning opportunities based on their racial status. This poses a

fundamental challenge to Goal 4, which aims at ensuring an inclusive and equitable quality education for all. Intimately connected to the right to education is the right to work. With poor educational outcomes at all levels in addition to racial discrimination, people of African descent are unable to secure decent work.

61. The Working Group asserts that people of African descent generally do not enjoy peace and security because of structural discrimination endemic within the criminal justice system. They do not have access to effective justice. They are subjected to racial profiling and police violence and are disproportionately incarcerated with impunity.

62. The Working Group concludes that enslavement, colonial and post-colonial injustices as well as constant struggles with structural racism, intolerance and Afrophobia have had a direct influence on the health and well-being of people of African Descent. Among many pivotal issues, special attention was given during the session to challenges faced by people of African descent in the area of mental health and the urgent need for adequate health care and support policies for people of African descent.

63. The Working Group welcomes the work of the Pan American Health Organization in the field of health of people of African descent. The work is based on an intercultural approach to health and equal treatment for the different groups from the standpoint of mutual respect, recognizing the value of culture and the elements that comprise it, including, among other things, lifestyles, value systems and traditions. PAHO/WHO is working on the development of specific plans on the health of people of African descent in the Latin American and Caribbean region.

64. The role of civil society in the work of the Working Group remains critical. The Working Group noted that civil society reported common manifestations of structural racism, racial discrimination, xenophobia, Afrophobia and related intolerance faced by people of African descent. The Working Group seeks to strengthen its engagement with civil society to further enhance its work by exploring innovative ways, including the use of modern technology, to allow wide participation of people of African descent.

65. The International Decade for People of African Descent aims at raising the issue of the historical, economic, political and cultural non-recognition of the people of African descent who were victims of the transatlantic trade in enslaved Africans, enslavement and colonialism. It also aims to deconstruct racism. The Decade offers the possibility of bringing together States, civil society and multilateral institutions to elaborate ways to effectively address the fundamental basis of knowledge and rights of people of African descent. Agenda 2063: The Africa We Want, adopted by the African Union and rooted in pan-Africanism and African renaissance, is also an important reference in this regard.

66. The Working Group will consider the development of operational guidelines for use by stakeholders (Governments, the United Nations and civil society) on how to prioritize people of African descent as a particularly discriminated-against group at all stages of implementation of the Sustainable Development Goals. The Working Group will advocate for: (a) special attention to the human rights situation of people of African descent, based on an analysis of disparities and specific programmes of action to address gaps and improve their human rights situation; and (b) the designing of special projects, in collaboration with people of African descent and civil society, to support their initiatives.

67. The Working Group will continue to assist and facilitate the exchange of information and to connect financial and development institutions with people of African descent and civil society for this purpose. It will share its country visit reports with development and financial institutions and request them to increase their efforts and continue to assist Member States and people of African descent in the implementation of its recommendations.

68. The Working Group will consider contributing to a baseline study on data on people of African descent, including the collection of disaggregated data in accordance

with human rights principles governing participation, disaggregation, self-identification, transparency, privacy and accountability. The study will be followed by an expert meeting on the importance of collecting data on people of African descent in order to close the gaps and address the inequalities and discrimination that they face.

69. The Working Group will conduct consultations with development and financial institutions in countries of interest to its mandate on prevention of racial discrimination against people of African descent. The consultations will be organized in cooperation with Governments, United Nations country teams, national human rights institutions, equality bodies and other civil society organizations and other relevant national stakeholders. The purpose would be to field test the operational guidelines on how to integrate the human rights concerns of people of African descent into the implementation of the Sustainable Development Goals.

B. Recommendations

70. States should make a genuine commitment to the standard of leaving no one behind by collecting disaggregated data. To monitor the implementation of the Sustainable Development Goals, it will be important to improve the availability of, and access to, data and statistics disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts to support the monitoring of the implementation of the Goals. The goal indicators should include the use of data from the existing mechanisms for monitoring compliance with human rights standards, especially the universal periodic review mechanism of the Human Rights Council and reviews of compliance with the International Convention on the Elimination of All Forms of Racial Discrimination.

71. The Working Group encourages financial and development institutions to support civil society and government programmes and projects which aim to implement the Working Group's recommendations.

72. The Working Group urges Member States to allocate additional investments to the health-care and education systems of people of African descent and to promote equal opportunities in employment, as well as other positive measures and strategies within the human rights framework.

73. National, regional and international civil society organizations should produce and submit reports on the progress achieved in implementing the Sustainable Development Goals in countries for which they have the expertise and experience and participate in intergovernmental review processes at the regional and international levels.

74. In order to eradicate poverty, particularly poverty affecting people of African descent, it is essential to deconstruct all the elements of power and knowledge which maintain and promote the ongoing structural racism of which people of African descent are victims.

75. In order to advance the Sustainable Development Goals, States must provide effective, accountable and inclusive public institutions which must, inter alia, effectively protect the human rights of people of African descent. The Working Group recommends community-based monitoring of the Goals. Grass-roots organizations can become active partners for change.

76. The Working Group urges States to eradicate multiple forms of discrimination and oppression faced by women and girls of African descent in accordance with the concept of intersectionality in all areas of the Sustainable Development Goals.

77. States must ensure that people of African descent have access to quality education which enables them to compete on an equal footing with others in the labour market. States must acknowledge the persistence of structural racism and multiple forms of discrimination within the education system and must therefore put in place appropriate legislation and affirmative action policies to tackle the problem.

School curriculums for all should take into consideration an accurate account of the history of the transatlantic trade in enslaved Africans, enslavement and colonialism.

78. **States should ratify international agreements related to the fight against racism and discrimination in education. To this end, the Working Group calls for universal ratification of the International Covenant on Economic, Social and Cultural Rights as well as the Optional Protocol thereto and the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization.**

79. **The Working Group calls upon States to promote access to decent work for people of African descent in key occupations and economic sectors without any discrimination, as required by ILO Convention No. 111. Other measures include improving anti-discrimination legislation and its enforcement by focusing and addressing multiple forms of discrimination such as discrimination based on race, colour, gender and disability.**

80. **Taking advantage of the International Decade for People of African Descent, States must cut the mass incarceration rate of people of African descent by half, at the very least, by 2024.**

81. **The challenges and specific risks faced by people of African descent in regard to health should be adequately addressed by States through, inter alia, efficient health insurance schemes, targeted programmes to reduce maternal mortality and improved pre- and post-birth medical care, providing adequate health services in all areas, including mental health and psychological support, and raising awareness of specific and culture-related health issues of people of African descent among the public as well as among medical professionals.**

82. **The Working Group welcomes the efforts being conducted by PAHO/WHO regarding health for people of African descent and recommends that such work be extended to other regions and organizations.**

83. **States should promote a new appreciation of traditional knowledge, practices and cultural expressions through transmission mechanisms specific to each culture and with regard to the protection of the biological and cultural heritage of people of African descent.**

84. **All international, regional and national organizations, including United Nations agencies, should have a specific mandate on people of African descent. It is essential to promote social participation and strategic partnerships with people of African descent, ensuring the representation of women, men and the entire population concerned when designing policies and activities.**

85. **The Working Group encourages civil society to engage constructively with States in the implementation of the Working Group's recommendations. The Working Group urges civil society organizations to make use of its complaint procedure to bring to its attention any concerns relating to Africans and people of African descent.**

86. **The Working Group calls upon Member States and United Nations agencies and programmes, as well as international development and financial programmes to empower and connect grass-roots and other civil society representatives who are working together to seek recognition and justice for legacies of enslavement and colonialism.**

87. **The Working Group calls upon States and international agencies, funds and programmes to ensure continued engagement with the Working Group, including at the upcoming high-level political forum on sustainable development and other relevant forums.**

88. **The International Decade for People of African Descent and the Sustainable Development Goals must meet the aspirations of people of African descent. The Durban Declaration and Programme of Action must be reaffirmed and States must guarantee their implementation. The Working Group urges Member States to reach consensus so that the forum for people of African descent can be held as soon as**

possible before the end of 2017. In order for the forum to reflect the concerns of States and civil society, it is desirable to open a consultation with civil society organizations to work on the format of the forum. The forum should, *inter alia*, discuss sources of racism and Afrophobia and the question of reparatory justice, as well as the overall theme of the Decade: recognition, justice and development. The work in the forum should lead primarily to the development of a United Nations declaration on people of African descent and other tangible results.

Annex

List of participants at the twentieth session

A. Members of the Working Group

Michal Balcerzak

Sabelo Gumedze

Mireille Fanon Mendes-France

Ahmed Reid

Ricardo A. Sunga III

B. Member States

Algeria, Argentina, Barbados, Benin, Botswana, Brazil, Colombia, Congo, Côte d'Ivoire, Cyprus, Czechia, Djibouti, Ecuador, Israel, Japan, Maldives, Malta, Mauritius, Mexico, Panama, Peru, Rwanda, South Africa, Ukraine.

C. Non-member States

Holy See.

D. Intergovernmental organizations

European Union.

E. Non-governmental organizations in consultative status with the Economic and Social Council

Action internationale pour la paix et le développement dans la région des Grands Lacs, Commission africaine des promoteurs de la santé et des droits de l'homme, CIVICUS: World Alliance for Citizen Participation, Comité international pour le respect et l'application de la charte africaine des droits de l'homme et des peoples, International Youth and Student Movement for the United Nations.

F. Non-governmental organizations not in consultative status with the Economic and Social Council

Association Urabá Global Suisse-Colombie, Black Mental Health UK, Comité national pour les réparations-Martinique, Culture of Afro-Indigenous Solidarity, Haiti Support Group, Leadership Conference on Civil Rights Education Fund-USA, West Against Racism Network (WARN).

G. Panellists and presenters

Fabiana Del Popolo, Economic Commission for Latin America and the Caribbean Hilary Gbedemah, member, Committee on the Elimination of Discrimination against Women

Domenica Ghidei Biidu, European Commission against Racism and Intolerance

Justin Hansford, Associate Professor, St. Louis University School of Law, United States of America

Matilda MacAttram, Director, Black Mental Health UK

Gay MacDougall, member, Committee on the Elimination of Racial Discrimination

Michael McEachrane, European Network for People of African Descent

Taonga Mushayavanhu, Permanent Representative of Zimbabwe to the United Nations Office at Geneva and Chair of the Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination

Martin Oelz, team leader, Indigenous Peoples and Ethnic Minorities, Gender, Equality and Diversity Branch, International Labour Organization

Sandra del Pino, Regional Adviser on Cultural Diversity in the Family, Gender and Life Course Department, Pan American Health Organization/World Health Organization

Carlos Quesada, Director, International Institute on Race, Equality and Human Rights

Sara Sekkenes, Conflict Prevention Adviser, United Nations Development Programme

Yvette Stevens, Permanent Representative of Sierra Leone to the United Nations Office at Geneva and Chair of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action

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Report of the Working Group of Experts on People of African Descent on its mission to Canada

Note by the Secretariat

The report transmitted herewith contains the findings of the Working Group of Experts on People of African Descent on its visit to Canada from 17 to 21 October 2016. In it, the Working Group presents the current legal, institutional and policy framework, and measures taken to prevent racism, racial discrimination, xenophobia, Afrophobia and related intolerance faced by people of African descent in Canada, underscoring positive developments as well as gaps in implementation. The Working Group describes the situation, highlights good practices and the main challenges identified, and makes concrete recommendations.

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Report of the Working Group of Experts on People of African Descent on its mission to Canada*

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* Circulated in the language of submission only.

I. Introduction

1. At the invitation of the Government of Canada, the Working Group of Experts on People of African Descent undertook a visit to Canada from 17 to 21 October 2016. The members of the delegation were Ricardo A. Sunga III, Ahmed Reid and Michal Balcerzak.

2. The Working Group visited Ottawa, Toronto, Halifax and Montreal. In Ottawa, the Working Group met with representatives of several federal government departments and agencies, including the Assistant Deputy Minister of International Security, Global Affairs; Statistics Canada; Canadian Heritage; Immigration, Refugees and Citizenship; Justice; Health; Education for Sustainable Development Canada; Public Safety; Correctional Service; the Royal Canadian Mounted Police (RCMP); National Defence; the Canadian Human Rights Commission; the Office of the Correctional Investigator; and the Civilian Review and Complaints Commission for the RCMP. The Working Group also met with a Member of Parliament.

3. In Toronto, the Working Group met with officials from the Government of Ontario Anti-Racism Directorate; Ministry of Education; Ministry of the Attorney General; Ministry of Community Safety and Correctional Services; Ontario Provincial Police; Toronto Police Service; the Ontario Ombudsman; and the Ontario Human Rights Commission. The Working Group also visited the Toronto South Detention Centre. In Halifax, the Working Group met with Government of Nova Scotia officials, including the Executive Director of the Nova Scotia Human Rights Commission; Halifax Police Service; the Department of Justice; and the Office of African Nova Scotian Affairs. In Montreal, the Working Group met with Government of Quebec officials, including the Vice-President of the Quebec Commission on Human Rights and Youth Rights; the Ombudsperson (Protecteur du Citoyen); and representatives of the ministries of Justice; Immigration; Employment; Education and Public Safety. In all the cities visited, the Working Group also met with African Canadians, lawyers, academics and non-governmental organizations.

4. The Working Group thanks the Government of Canada for its invitation to visit the country and for its cooperation during the visit. In particular, it thanks Global Affairs Canada and the provincial authorities in Ontario, Nova Scotia and Quebec for their support.

5. The Working Group warmly thanks the African Canadian Legal Clinic for coordinating meetings with civil society in different parts of the country, and the many African Canadians, civil society organizations, human rights defenders, lawyers, academics and individuals who shared their views on the human rights situation of people of African descent in the country.

II. Background

A. Historical overview

6. People of African descent have lived in Canada since the beginning of transatlantic settlement. Among the earliest arrivals were enslaved Africans from the New England States of the United States of America and the West Indies. Between 1763 and 1865, most Blacks migrating to Canada were fleeing slavery in the United States. Indeed, the United States remained the main source of new Black immigrants to Canada until the 1960s when changes to the Immigration Act removed the bias against non-white immigrants and permitted large numbers of qualified West Indians and Africans to enter Canada. This major influx of Black people greatly outnumbered the original Black population in every Canadian region, except the Maritimes.[1]

[1] See www.thecanadianencyclopedia.ca/en/article/black-canadians/.

7. Slavery existed in Canada from the 16th century until its abolition in 1834. After slavery was abolished, African Canadians still had to contend with de facto segregation in housing, schooling and employment, and exclusion from public places such as theatres and restaurants.[2]

8. African Canadians made significant contributions to early Canadian society. In the war of 1812, African Canadians fought in the British army defending Canadian borders against the United States. Similarly, in 1837, African Canadians assisted in quashing the rebellion in Upper Canada against the proposed unification of Upper and Lower Canada by the British. The contribution of African Canadians was also notable in politics: not only did they contribute to bringing the province of British Columbia into the Canada Confederation, but they established successful settlements and founded schools that provided education to children of all races.[3]

9. In the 1960s, the African Nova Scotian community of Africville, north of Halifax, was destroyed to make way for industrial development. For over 150 years, Africville had been home to hundreds of African Canadian individuals and families, some of whom could trace their roots in Nova Scotia back to the late 1700s. Africville was a vibrant, self-sustaining community that thrived despite the harshest opposition, and most of its inhabitants were landowners. The denial of services, environmental racism and targeted pollution of the community and other deplorable tactics employed by the authorities to displace the residents of Africville is a dark period in Nova Scotian history. In the 1980s, the Africville Genealogy Society initiated legal action seeking compensation for their loss. In 2010, an apology was issued by the city of Halifax for the destruction of the community and the land, and $3 million were allocated to build a museum on the Africville site.[4]

B. Demographics

10. In Canada, the term "visible minority" is used to define one of four designated groups under the Employment Equity Act, 1995). The Act is intended to achieve workplace equality and rectify employment disadvantages affecting women, Aboriginal peoples, persons with disabilities and visible minorities. Visible minorities are "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour". The visible minority population consists mainly of persons of South Asian, Chinese, Black, Filipino, Latin American, Arab, Southeast Asian, West Asian, Korean and Japanese origin.

11. The 2016 census gave the total population of Canada as 35,151,72 million;[5] data on immigration and ethnocultural diversity will be released in October 2017. However, according to the 2011 census, the Black population in Canada was 945,665, that was 2.9 per cent of the total Canadian population and 15 per cent of the visible minority population, and Black Canadians were ranked third in the visible minority category after South Asians (1.6 million) and Chinese (1.3 million). In 2011, 29.8 per cent of individuals identifying themselves as Black reported multiple ethnic or ancestral origins. The largest African ancestral origins were Caribbean, such as Jamaican (22.8 per cent) and Haitian (13.9 per cent), and Somalian (4.4 per cent). Those origins were reported either alone or with other origins. Some individuals reported their origins as the British Isles (10.9 per cent), Canadian (10.8 per cent) and French (4.3 per cent).

12. The proportion of persons belonging to a visible minority group quadrupled between 1981 and 2011, from 4.7 per cent to 19.1 percent. The Black Canadian population is mainly composed of people of African descent whose ancestors would have come to Canada since the 18th and 19th centuries; people who migrated directly from Africa and the Caribbean after 1961 when the immigration laws were amended allowing non-White immigration; and African Americans who migrated to Canada.

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[2] Robin Winks, *The Blacks in Canada: A History*, 2nd ed. (Montreal, McGill-Queen's University Press, 1997).

[3] Lawrence Hill, *Trials and Triumphs: Stories of African Canadians* (Toronto, Umbrella Press, 1993).

[4] See http://africvillemuseum.org/the-community-of-africville/.

[5] See http://www12.statcan.gc.ca/census-recensement/2016/rt-td/index-eng.cfm.

13. Between 1961 and 2012, the relative share of immigrants from Africa grew substantially from 1.5 per cent to 13.0 per cent, and the African-born proportion of the population of Canada nearly tripled between 1981 and 2011, from 2.6 per cent to 7.3 per cent. That proportion could continue to increase in the coming decades, although it may remain below 1[0] per cent. Preston, a settlement in the Halifax area, Nova Scotia (on land that the British Crown granted to Black Loyalists following the American Revolution), has the highest percentage (69.4 per cent) of Blacks in Canada.

14. In 2011, there were 20,790 African Nova Scotians; they make up the largest racially visible group in that province. Of those, 80.7 percent were born in the province, 77.2 per cent have been Canadians for three or more generations, while 10 percent of African Nova Scotians are new Canadians coming primarily from Africa, the Caribbean and the United States. There has been a long history of resistance and resilience by African Nova Scotians and they have developed a distinct culture, traditions and social and political practices.[6]

15. The Working Group is concerned that the category "visible minority" obscures the degrees of disparity in treatment and specific human rights concerns of African Canadians.

16. Despite the wealth of information and data on socioeconomic indicators, there is a serious lack of race-based data and research, which could inform prevention, intervention and treatment strategies for African Canadians. The authorities acknowledged that disaggregated data along racial and ethnic lines was necessary to understand the human rights concerns of African Canadians.

III. Framework and steps taken to protect the human rights of people of African descent

A. Legal framework

17. Canada has ratified the main international human rights treaties, except for the International Convention on the Protection of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

18. Canada has a strong legal and policy framework to combat racial discrimination and advance substantive equality. The framework includes prohibitions on discrimination and intolerance in the Canadian Charter of Rights and Freedoms, the Criminal Code and federal, provincial and territorial human rights statutes. The Canadian Multiculturalism Act (1985) recognizes diversity as a fundamental characteristic of Canadian society. It requires institutions to respect and be inclusive of the country's multicultural character and commits to promoting the full and equitable participation of individuals of all origins and eliminating barriers to that participation.

19. Canada has a range of measures to promote diversity and inclusion, such as employment equity legislation, policies, programmes and services at the federal, provincial and territorial levels and has taken special measures to advance substantive equality groups, most notably for indigenous peoples. However, Canada has not introduced special measures for African Canadians, despite the disparities and systemic anti-Black racism and discrimination they face in the enjoyment of their social, economic and cultural rights.

20. The Working Group notes with satisfaction that, following its visit, the Government of Ontario adopted a number of measures aimed at benefitting African Canadians. On 1 June 2017, the Government passed Bill 114, the Anti-Racism Act, which recognizes the distinct nature of anti-Black racism and the need to address it on an ongoing basis. It requires the Government of Ontario to maintain an anti-racism strategy that aims to eliminate systemic racism and advance racial equity, which must include "initiatives to assist racialized groups that are most adversely impacted by systemic racism", including

[6] Information provided during meetings with civil society.

indigenous and Black communities, and targets and indicators to measure its effectiveness, which must be reported on annually. The Act also requires the Government of Ontario to review the anti-racism strategy at least every five years; and any review or revision of the strategy must include consultation with members and representatives of communities that are most adversely impacted by systemic racism, including indigenous and Black communities.

II. Institutional and policy measures

21. The Working Group welcomes the ongoing efforts by the federal Government to address racial discrimination faced by people of African descent and to promote human rights, diversity and inclusion in partnership with African Canadian communities and civil society organizations. It also welcomes the important work carried out by the national and provincial human rights institutions to investigate and refer complaints, review legislation, issue, and monitor the implementation of, recommendations to address systemic anti-Black racism.

22. The Working Group further welcomes the establishment in 2016 of the Anti-Racism Directorate to eliminate systemic racism and to promote fair practices and policies across Ontario. The Working Group was informed that the Directorate will develop a province-wide anti-racism strategy with a racial equity impact assessment framework and methodology to assess programmes and services, carry out anti-racism data collection based on disaggregated race-based data and an anti-racism perspective to inform and support ministries on substantive policy and programming initiatives. The Directorate will also seek to increase public education and awareness of systemic racism through a province-wide anti-racism campaign.

23. On 21 February 2017, the Government of Ontario formally recognized the International Decade for People of African Descent and acknowledged that people of African descent represented a distinct group whose human rights must be promoted and protected.

24. Also in February 2017, the Ministry of Children and Youth Services announced the launch of the four-year Ontario Black Youth Action Plan to support and help reduce outcome disparities in schooling, post-secondary education and employment of 10,926 Black children, youth and families annually. In addition, the Ministry reportedly provided funding through the Ontario Association of Children's Aid Societies to the One Vision One Voice project, which is aimed at working with Black community leaders to develop a more culturally appropriate practice framework to deliver child welfare services.

25. In March 2017, the Minister responsible for anti-racism released *A Better Way Forward: Ontario's 3-year Anti-Racism Strategic Plan*,[9] part of the provincial government's commitment to fight systemic racism and create fair and equitable outcomes for Black, indigenous and other racialized people. The plan includes a commitment to develop and release an anti-Black racism strategy in Fall 2017 that will "leverage partner ministries to identify baseline data and publicly report measures and targets that aim to reduce the overrepresentation of Black children and youth within the child welfare system, the achievement gap between Black students and all students within the publicly-funded education system and the disproportionate number of Black males involved in the youth justice and justice systems". The 3-year strategic plan includes targeted public education and awareness initiatives focusing on anti-Black racism, anti-indigenous racism, antisemitism, Islamophobia and other forms of racism against racialized groups.

26. The Working Group welcomes the new federal initiative to appoint a judiciary that reflects the diversity of the country, thereby encouraging applicants to self-identify on the basis of race, gender identity, indigenous status, sexual orientation and physical disability.

[9] See https://www.ontario.ca/page/better-way-forward-ontarios-3-year-anti-racism-strategic-plan#_ga=2.206866459.1010491996?.1497427734-1951199954.1497427734.

and to provide anti-racism bias training for committees that screen candidates with a view to preventing rejection of good applicants from minority groups.

27. The appointment on 10 January 2017 of Ahmed Hussen, an African immigrant, as the Minister for Immigration, Refugees and Citizenship is a welcome development.[6]

28. The Working Group welcomes the organization of events such as Black History Month and Lincoln Alexander Day to celebrate the achievements and contributions of African Canadians. It underlines the historical importance of the Africville community and museum as a site of memory in Nova Scotia. It welcomes the specific focus on African Canadian history, experiences and social conditions at the Canadian Museum for Human Rights.

29. The Working Group noted the steps taken by the Government of Quebec to improve the educational outcomes of African Canadian students, including the issuance of a publication highlighting the contribution of African Canadians to the history and development of Quebec society, which is made available to schools, and the organization of intercultural awareness activities in schools by the Black History Month Round Table.

30. In Nova Scotia, the Working Group noted the use of presentencing cultural impact assessments which take into account the history and legacies of racial discrimination against African Canadians.

31. The Working Group also noted the existence of the African Canadian Services Division within the Nova Scotia Department of Education, which advises the provincial government on African Canadian education, promotes understanding of African Canadians and their history, heritage, culture, traditions and contributions to society, ensures African Canadian students have greater access to post-secondary institutions and works with staff to address systemic racism and discrimination by facilitating the implementation of the province's racial equity policy.

32. The Working Group was informed about the Nova Scotia Home for Coloured Children Restorative Inquiry, which is intended to address the history of institutionalized abuse of children and systemic and institutional racism.[7] The Working Group welcomes the inquiry as a model of restorative justice based on collaborative examination and decision-making and encourages the province's public agencies to engage as fully as possible in the process. The Working Group encourages the federal and provincial governments and agencies to adopt similar collaborative and restorative approaches in addressing similar issues affecting people of African descent in their jurisdictions.

IV. Manifestations of racial discrimination

33. Despite Canada's reputation for promoting multiculturalism and diversity and the positive measures taken to address racial discrimination, the Working Group is deeply concerned about the human rights situation of African Canadians. Canada's history of enslavement, racial segregation and marginalization has had a deleterious impact on people of African descent, which must be addressed in partnership with communities. Across the country, many people of African descent continue to live in poverty and poor health, have low educational attainment and are overrepresented in the criminal justice system. It is important to underline that the experience of African Canadians is unique because of the particular history of anti-Black racism in Canada, which is traceable to slavery and its legacy, through specific laws and practices enforcing segregation in education, residential accommodation, employment and other economic opportunities. History informs anti-Black racism and racial stereotypes that are so deeply entrenched in institutions, policies and practices, that its institutional and systemic forms are either functionally normalized or rendered invisible, especially to the dominant group. This contemporary form of racism

[6] See http://canadaimmigrant.ca/news-and-views/news/named-hussen-appointed-minister-of-immigration-refugees-and-citizenship.

[7] See http://restorativeinquiry.ca/.

replicates the historical de jure and de facto substantive conditions and effects of spatial segregation, economic disadvantage and social exclusion.[10]

A. Criminal justice system

34. The Working Group is particularly concerned about the overrepresentation of African Canadians in the criminal justice system, which may be attributed to racial bias at all levels of the system, from racial profiling to the exercise of prosecutorial discretion, the imposition of pretrial incarceration and disparities in sentencing.[11]

35. There is clear evidence that racial profiling is endemic in the strategies and practices used by law enforcement. Furthermore, arbitrary use of "carding", or street checks — the police practice of stopping, questioning and documenting people suspected of a crime — disproportionately affects people of African descent. A York University research team working on the Ottawa Police Service Traffic Stop Race Data Collection Project found that in Ottawa, Middle Eastern and Black groups, irrespective of their sex and age had disproportionately high incidences of traffic stops. Middle Eastern drivers were stopped 10,066 times, that is about 12.3 per cent of total stops over the period 2013-2015, yet they represented less than 4 per cent of the total driving population in Ottawa. That means that Middle Eastern drivers were stopped 3.3 times more than what you would expect based on their population. Black drivers were stopped 7,238 times, that is about 8.8 per cent of total stops over the two-year period, while Black drivers represented less than 4 per cent of the total driving population in Ottawa. That means that Black drivers were stopped 2.3 times more than what you would expect based on their population.[12] Owing to its arbitrary use, carding has been known to escalate into police violence, resulting in injuries and even deaths of people of African descent, especially when those targeted are suffering from health issues and mental disabilities.

36. In 2015, the Ombudsman of Ontario, in a submission entitled "Street Checks and Balances", was of the view that "stopping citizens without an objective and reasonable basis for believing that they may be implicated in a recent or ongoing criminal offence, or where there are reasonable and probable grounds to arrest them, is unconstitutional". He considered it "a form of arbitrary detention contrary to section 9 of the Canadian Charter of Rights and Freedoms". He also considered that the purported benefit of street checks — their effectiveness as a policing tool to improve public safety — did not meet the reasonable limits test established by section 1 of the Charter and that the detrimental effects of street checks on individuals and the community were simply too great to justify the practice. Furthermore, he stated that if the Government persisted in its attempt to permit and regulate street checks, significant safeguards would be required to minimize the infringement on individual civil rights and salvage community confidence in policing in the province.[13]

37. The Working Group is concerned about excessive use of force and killings by the police, especially in response to cases involving vulnerable people of African descent, who are mentally ill or otherwise in crisis. Several Black Canadians have reportedly been killed by the police since 2010, including Andrew Loku, Jermaine Carby, Alex Wettlaufer, Kwasi Skene-Peters, Jean-Pierre Bony, Ian Pryce, Frank Antony Berry, Michael Eligon, Eric Osawe, Reyarl Jardine-Douglas and Junior Alexander Manon.

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[10] See African Canadian Legal Clinic, "Report on the Canadian government's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination", July 2002.

[11] Julian V. Roberts and Anthony N. Doob, "Race, ethnicity and criminal justice in Canada", *Crime and Justice*, No. 21 (1997).

[12] Lorne Foster and others, "Race data and traffic stops in Ottawa, 2013-2015: A report on Ottawa and the Police Districts" (October 2016), p. 3. Available at https://www.ottawapolice.ca/en/about-us/resources/.TSRDCP_York_Research_Report.pdf.

[13] See https://ombudsman.on.ca/Files/sitemedia/Documents/OntarioOmbudsman-StreetChecks-EN.pdf, p. 4.

38. It is reported that, Jermaine Carby, 33, was fatally shot by the Peel regional police in Brampton on 24 September 2014. The police alleged that he refused to drop a knife when ordered to. However, investigators from the provincial Special Investigations Unit did not find a knife at the scene. None of the officers involved in the episode were charged, disciplined or even identified publicly.[14]

39. Andrew Loku, 45, a mentally ill Black man who had immigrated to Canada from South Sudan, was shot dead by the Toronto police outside his apartment in July 2015, after he refused to put down a hammer.[15]

40. Abdirahman Abdi, a Somalian immigrant, was allegedly beaten to death by Ottawa police officers while in police custody on 24 July 2016.[16]

41. The Working Group is concerned that no race-based statistics on fatal police incidents are kept by Ontario's police watchdog or Statistics Canada, the Toronto police or the Ministry of Community Safety and Correctional Services. Statistics Canada Centre for Justice Statistics only tracks fatal police shootings if an officer is criminally charged and does not keep statistics on race. There also seems to be a disturbing pattern of impunity for police violence. According to Anthony Morgan, a Toronto-based community advocate and lawyer, since 1978, no police officer has served time in prison for killing a Black person, despite the fact that Black people are extraordinarily overrepresented in instances of police use of lethal force.[17]

42. In July 2015, the *Toronto Star* newspaper requested the Special Investigations Unit to provide it with information on every fatal shooting incident involving police since its inception in 1990. The list contained only the dates of fatal police-involved shootings and excluded incidents such as when someone committed suicide with a gun in the presence of police. The *Toronto Star* cross-referenced the dates with news archives and the Unit's news releases to identify the person killed and, wherever possible, their racial background. The analysis showed that, of the 51 fatal shootings involving the Toronto police, at least 18 involved Black men, representing 35 per cent of fatal police shootings. Toronto's Black population is roughly 9 per cent of the total population. In 17 cases, or 33 per cent, of the shootings, it was not possible to identify for certain the racial background of the person killed or, in a few cases, even their identity.[18]

43. The Working Group welcomes the 2016 report of the Ombudsman of Ontario on his investigation into how Ontario police services attempt to de-escalate conflict situations, and his recommendations aimed at changing police culture.[19] The Government of Ontario said that it was willing to respond to the concerns raised in the report and the new Minister of Community Safety and Correctional Services announced that all 22 recommendations in the report would be implemented.

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[14] See https://www.thestar.com/news/crime/2015/07/21/no-charges-against-peel-police-in-death-of-jermaine-carby.html.

[15] See https://www.thestar.com/news/gta/2017/06/13/family-says-andrew-loku-was-a-happy-person-who-just-got-pushed-too-far.html.

[16] See https://www.theglobeandmail.com/news/national/black-lives-matter-protests-death-of-abdirahman-abdi-in-cities-across-canada/article31531189/.

[17] See https://www.thestar.com/opinion/commentary/2016/07/25/why-canada-needs-black-lives-matter.html.

[18] See https://www.thestar.com/news/crime/2015/08/16/how-many-black-men-have-been-killed-by-toronto-police-we-cant-know.html.

[19] Ombudsman of Ontario, *A Matter of Life and Death*, Investigation into the direction provided by the Ministry of Community Safety and Correctional Services to Ontario's police services for de-escalation of conflict situations (June 2016). Available at https://www.ombudsman.on.ca/Files/sitemedia/Documents/OntarioOmbudsmanDeescalationEN_1.pdf.

44. Over the last decade, the composition of the federal inmate population has changed dramatically. There has been an alarming increase of 71.1 per cent in the number of African Canadians incarcerated in federal corrections between 2005 and 2015.[20]

45. According to the Office of the Correctional Investigator of Canada, in 2015-16, Black inmates represented 9 per cent of the federal prison population and 7.5 per cent of the federal supervised population although Black Canadians comprise just 3 per cent of the Canadian population. In terms of correctional outcomes, Black inmates in federal custody are overrepresented in maximum security, segregation (or solitary confinement) and use of force incidents. They incur a disproportionate number of institutional charges, particularly those that could be considered discretionary on the part of correctional staff, and are released later in their sentence and less likely to be granted day or full parole.[21]

46. The Working Group is extremely concerned about the practice and excessive use of segregation in correctional facilities, the absence of appropriate monitoring and the lack of data on inmates' race, mental health status and gender. Segregation is used in both adult and juvenile detention facilities. The Working Group noted that as many as 40 per cent of inmates in segregation in Toronto South Detention Centre were of African descent. The Ombudsman of Ontario agreed that segregation had serious adverse effects on inmates, especially vulnerable individuals with mental health and/or developmental disabilities. He recommended that the Ministry of Community and Correctional Services adopt the long-term goal of abolishing indefinite segregation and develop inmate housing and programmes that meet the needs of vulnerable inmates with mental health, developmental and behavioural challenges.[22] The Working Group noted that inmates who asserted their rights were subject to reprisal by prison guards through disciplinary sanctions, including segregation. A freeze in the recruitment of correction officers in the past years has resulted in severe understaffing, leading to the frequent use of lockdowns (when inmates are restricted to their cells) that has further curtailed the human rights of detainees, the majority of whom are African Canadian. Lockdowns, which tend to take place during weekends owing to low staffing or during searches on suspicion of possession of weapons or other illegal items, deprive detainees of many of their human rights, such as socializing, using the recreational facilities and even taking a shower.

47. The Office of the Correctional Investigator reported that Black inmates were 1.5 times more likely to be placed in maximum security institutions where programming, employment, training, education upgrading, rehabilitative programming and social activities are limited. Furthermore, Black inmates experience discrimination by correctional officials through the use of racist language, as well as being ignored and disregarded in ways that increase feelings of marginalization, exclusion and isolation. These inmates are also often labelled with discriminatory stereotyping such as being called a gang member or trouble-maker or drug dealer or womanizer. A review of data from 2008-2013 showed that Black inmates were consistently overrepresented in administrative segregation, particularly involuntary and disciplinary placements, and in 2012-2013, Black inmates were disproportionately involved in use of force incidents.[23]

48. The Ombudsman of Ontario reported on egregious examples of use of force by correctional officers, in which correctional staff committed "brazen acts of violence"

[20] Ivan Zinger, "Human rights and federal corrections: a commentary on a decade of tough on crime policies in Canada", *Canadian Journal of Criminology and Criminal Justice*, vol. 58, No. 4 (October 2016), pp. 609-627.

[21] Office of the Correctional Investigator, "A case study of diversity in corrections: the Black inmate experience in federal penitentiaries", Final report, 2013. Available at http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20131126-eng.pdf.

[22] Ombudsman of Ontario, "Segregation: not an isolated problem", Written submission to the Ministry of Community Safety and Correctional Services (May 2016). Available at https://www.ombudsman.on.ca/Resources/Speeches/2016/Segregation--Not-an-Isolated-Problem.aspx#The_bottom_line.

[23] Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013* (June 2013). Available at http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx.

against inmates, attempted to destroy and falsify evidence and intimidated colleagues who tried to speak out against them. The acts were verified by ministry investigations. The Ombudsman called on the Ministry of Community Safety and Correctional Services to crack the pervasive code of silence under which some guards in Ontario correctional institutions use excessive force against inmates and conspire to cover it up. In order to reduce the risk of excessive use of force, he recommended that the Ministry focus on the malignant peer pressure that continued to influence the attitudes and actions of some correctional officers as it had a duty to ensure the welfare of everyone in its correctional institutions, particularly those entrusted to its custody. It must take all reasonable precautions to protect inmates from abuse by those responsible for their protection, including ensuring that vigorous action was taken to eradicate the code of silence that threatened the security of inmates and staff alike. The Ombudsman made 45 recommendations to the Ministry, including that it take direct and assertive action to address the dysfunctional correctional culture. The Ministry pledged to implement the Ombudsman's recommendations.[24]

B. Hate crimes

49. According to information provided by the federal Government, in 2013, the police reported 585 incidents of hate crimes motivated by race or ethnicity. The Working Group is deeply concerned that the Black population was the most highly targeted group, experiencing 44 per cent of racial hate crimes.

50. The Government informed the Working Group that the Criminal Code requires judges to consider, as an aggravating circumstance in sentencing, any evidence that a crime was motivated by bias, prejudice or hate based on grounds such as race, colour, religion, national or ethnic origin. Vandalizing or damaging property primarily used for religious worship is a specific crime if the action is motivated by bias, prejudice or hate based on religion, race, colour, national or ethnic origin. The Criminal Code punishes three hate propaganda offences: advocating or promoting genocide against an identifiable group; inciting hatred against an identifiable group in a public place that is likely to lead to a breach of the peace; and wilfully promoting hatred against an identifiable group. It defines an identifiable group as "any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability".

51. In 2015, the Government of Quebec tabled Bill 59 to enact the Act to prevent and combat hate speech and speech inciting violence and to amend various legislative provisions to better protect individuals. The bill provides for the prohibition of hate speech and speech inciting violence that are engaged in or disseminated publicly and that target a group of people sharing a common characteristic identified as prohibited grounds for discrimination under the Quebec Charter of Human Rights and Freedoms. The bill was under review at the time of drafting of this report.

52. Civil society was concerned that although the presence of aggravating factors should lead to harsher sentences, since the Criminal Code makes no distinction between an assault and an assault motivated by racism, it was difficult to track and measure the efficacy of hate crime prosecutions and convictions. It underlined that the lack of a federal offence for race-based assaults created a problem of transparency and accountability. The Working Group heard that victims and community groups have to exert pressure on prosecutors to have offences recognized as hate crimes motivated by anti-Black racism. As the prosecutor must request the judge to consider the racist nature of the crime, a lack of understanding of anti-

[24] Ombudsman of Ontario, *The Code*, Investigation into the Ministry of Community Safety and Correctional Services' response to allegations of excessive use of force against inmates (June 2013). Available at https://ombudsman.on.ca/Files/sitemedia/Documents/Investigations/SORT%20Investigations/The-Code-EN.pdf.

Black racism by prosecutors and/or the members of the judiciary often prevents hate and bias towards African Canadians from being considered.[25]

C. Disparities in access to education, health, housing and employment

53. The cumulative impact of anti-Black racism and discrimination faced by African Canadians in the enjoyment of their rights to education, health, housing and employment, among other economic, social and cultural rights, has had serious consequences for their overall well-being. Anti-Black racism continues to be systemic, leaving African Canadians among the poorest communities in Canada.

54. Reports have indicated a pattern of steady decline in the economic situation and increasing poverty of African Canadians. One report states that the poverty rate among Black Canadians is more than three times the average for Whites. In 2000, one in two African Canadian children lived below the low income cut-off rate before taxes, compared to one in 10 for European Canadians. Furthermore, poverty among single-parent, mother-led families stood at 65 per cent for African Canadian families compared to 26 per cent for European Canadian families. African Canadians in Montreal, Quebec, have the highest poverty rates among all "visible minorities" in the city. Approximately 50 per cent of the Black Canadian population are categorized as low income, with that number jumping to 65 per cent for new Black immigrants.[26]

55. The Working Group was concerned to learn about anti-Black racism and the lack of social inclusion in the education system in Canada. African Canadian students have disproportionately low educational attainment, high dropout rates, suspensions and expulsions and they are more likely than other children to be streamed into general and basic-level academic programmes, instead of advanced-level programmes. Race-based stereotypes about African Canadian students' scholastic ability have had a devastating impact. The three primary concerns expressed were differential treatment, lack of Black and African-Canadian history and culture in the curriculum and the absence of Black teachers.[27] The quality of education received and the outcome of their educational experiences affects the employment and income potential of African Canadians.

56. In its report on education, the Black Learners Advisory Committee in Nova Scotia expressed what the Working Group had been hearing in different parts of the country: "Systemic racism persists". The educational inequities between African Nova Scotians and other Nova Scotians have remained unchanged after 30 years of school integration. The socioeconomic conditions in the Black communities across the province remain deplorable. African Nova Scotians' ability to access post-secondary education, especially in professional schools, remains very limited.[28] The Committee made several key recommendations to address the situation.

57. The Working Group noted the disproportionately high unemployment rates among African Canadians, many of whom are forced to take low-paying jobs with little security and poor prospects. The racialization of poverty is compounded by the feminization of poverty: the unemployment rate for African Canadian women is 11 per cent compared to 7 per cent for the general Canadian population and, when employed, African Canadian women earn 37 per cent less than White men and 15 per cent less than their White women. Also, 25 per cent of African Canadian women are living below the Canadian poverty line

[25] African Canadian Legal Clinic, "Errors and omissions: anti-Black racism in Canada", A report on the Canadian Government's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (24 January 2012).

[26] African Canadian Legal Clinic, Policy paper on poverty. Available at http://studylib.net/doc/8102332/policy-paper---african-canadian-legal-clinic.

[27] African Canadian Legal Clinic, Policy paper on education. Available at http://studylib.net/doc/8102332/policy-paper---african-canadian-legal-clinic.

[28] See Black Learners Advisory Committee, BLAC Report on Education: *Redressing Inequity — Empowering Black Learners*, Vols. 1-3 (Nova Scotia, 1994), p. 35. Available at https://acs.ednet.ns.ca/sites/default/files/BLAC%20Report%20on%20Education%20Vol%201-3.pdf.

compared to 6 per cent of White Canadian women. By extension, Black Canadian children are living in poverty at the unprecedented rate of 33 per cent for children of Caribbean heritage and 47 per cent for children of continental African heritage, compared to 18 per cent of White Canadian children living below the poverty line. African Canadian women and girls are reportedly targeted by the police and are increasingly in contact with the criminal justice system as one of the fastest growing prison populations.

58. Black immigrants come from almost all regions of Africa and the Caribbean; they are not a homogenous group. The Working Group was informed that members of the African diaspora faced unique forms of discrimination. Educated Black immigrants struggle to gain recognition for skills and degrees earned overseas and often work below their level of competency and qualification. Those who choose to upgrade their education in Canada do so at great financial and personal cost.

59. Many foreign workers come to Canada under the Temporary Foreign Worker Program and the Seasonal Agricultural Workers Program. The Working Group was informed that seasonal migrant workers of African descent are often subjected to deplorable working conditions. Migrant workers face obstacles complaining about working conditions because their presence in the country is tied to the specific employer(s) indicated on the work permits issued by the Immigration Department. Many are exploited and reportedly denied access to basic health services. They are required to pay taxes and contribute to Canadian social benefit programmes which they often cannot access. The situation is reminiscent of indentured labour.

60. The Working Group is concerned about the lack of implementation of the Land Titles Clarification Act in Nova Scotia, which should assist people of African descent in obtaining titles to the lands on which they live. The Act was passed in Nova Scotia in 1963 to create a process to assist with the clarification of land title and land ownership issues for residents living in 13 specific communities in Nova Scotia. For historic and systemic reasons, there was a lack of land ownership documentation for the residents of those areas and communities, many of whom are African Nova Scotian. The Act was intended to provide a simpler and inexpensive mechanism to obtain clarification of land titles. Under the Act, a certificate of title is issued to applicants who can show that they used and occupied the land claimed for at least 20 years. The process provides for notice to be given to the community and issues such as competing ownership claims and unsettled boundaries to be resolved before a certificate can be issued.

61. Civil society informed the Working Group that the system in place under the Act was not working as hoped. The process is reportedly unjust and discriminatory, and many have had their claims rejected. Residents must bear the burden for submitting all the documentation, as well as the application, lawyer and surveyor fees necessary to have the land title clarified. In May 2015, the Department of Natural Resources, which is responsible for processing the applications, acknowledged that the process was unclear and stated they were attempting to pilot a project to assist residents in the community to obtain the title to their property. It was recognized that there were financial and logistical hurdles for some residents wishing to obtain a certificate of title, as residents were responsible for all the costs of the process, include surveying and legal fees. However, an interdepartmental committee was currently considering various options for removing or reducing those barriers and providing support to African Nova Scotians to help them clarify titles to their properties. The Working Group emphasized that the Act must be implemented in collaboration with, and for the benefit of, the affected population group. All resources should be made available, fees should be waived and remedies should be provided for any discriminatory policies relating to the process of granting a certificate of title.

62. Civil society indicated that gentrification has had a detrimental and disparate impact on African Canadians with regard to access to adequate housing, especially in cities such as Montreal, Quebec.

63. Environmental racism is equally a concern. Landfills, waste dumps, polluting industries and other environmentally hazardous activities are disproportionately situated near neighbourhoods where many people of African descent live, creating serious health risks for them. For example, the African Nova Scotian community of Lincolnville has been

dealing with the social, economic and health effects of first- and second-generation landfills since 1974. There has been no consultation with African Canadian communities and no response has been provided to their concerns about environmental hazards. There is also an absence of policies and legislation to address the long-standing environmental concerns in those communities.

64. In general, African Canadians have poorer health outcomes and are less likely to avail themselves of health services than many other groups. Social factors, including poverty, unemployment, racism and discrimination, increase the risk of illness and interfere with timely and equitable treatment. Thus, African Canadians experience a high and disproportionate level of chronic health conditions such as hypertension, diabetes, HIV and AIDS, cancers, mental health problems and sickle cell disease.[29]

65. Several factors contribute to these health disparities, including historic barriers to access and continuity of health care, long-standing systemic racism, low socioeconomic status, lack of cultural specificity in health education and underrepresentation of Black health professionals in the system.

D. Multiple and intersecting forms of discrimination

66. The Working Group considered the multiple and intersecting forms of discrimination faced by people of African descent in Canada and heard from several about their experiences of racial and other forms of discrimination based on ethnicity, religion, socioeconomic status, language, sex and gender identity.

67. Civil society reported that racialized women in Canada consistently and disproportionately experienced poverty, homelessness, sexual assault, incarceration and discrimination. Women of African descent are particularly vulnerable to such marginalization as the fact of being women and members of a racial and/or religious minority intersect to compound discrimination. African Canadian women often find themselves entrenched in a cycle of poverty, with low levels of vocational and/or career advancement, lack of access to justice and deprived of the resources necessary to fully enjoy and participate in Canadian culture and life. An African Canadian woman who is poor and unemployed or who has a precarious immigration status or who is at risk of harm or domestic violence, or any combination thereof, is highly vulnerable to a deepening cycle of marginalization and social exclusion, which also affects her children and her community. The precariousness of a temporary or undocumented immigration status has a disproportionate impact for racialized women who may face violence in the home and/or in the workplace. They often have little or no protection from abuse and violence, for fear that police involvement might lead to deportation or that ending the relationship with physically abusive partners or private sponsors might mean losing their resident status in Canada.[30]

68. The Working Group is concerned by reports that, across Canada, African Canadian children are taken from their parents by child welfare agencies on dubious grounds without respect for the extended care opportunities that exist in African Canadian families and communities. Many reports and academic journals highlight racism as the root cause. For example, there is an overrepresentation of African Canadian youth and children in child welfare systems in Ontario; 41.8 per cent of the children and youth in the care of the Children's Aid Society of Toronto are of African descent.[31] Yet, Black Canadians make up only 6.9 per cent of Toronto's population and just 8 per cent of the city's population is under the age of 18. In contrast, 37 per cent of the children in care in Toronto are White, while more than 50 per cent of the city's population under 18 years is White.

[29] Information submitted by the Black Health Alliance, 2016.

[30] See African Canadian Legal Clinic, Report to the Committee on the Elimination of Discrimination against Women (2016). Available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_NGO_CAN_25429_E.pdf.

[31] See Children's Aid Society of Toronto, "Addressing disproportionality, disparity and discrimination in child welfare", Data on services provided to Black African Caribbean Canadian families and children, July 2015.

69. Immigrants of African descent face language barriers in accessing information related to employment, education and social services. This was especially relevant to and a source of concern for Anglophone immigrants in Quebec and Francophone immigrants in Ontario. A survey carried out in 2013 by TransPULSE,[32] a community-based research project investigating the impact of social exclusion and discrimination on the health of transgender people in Ontario, indicated that 26 per cent of racialized transgender individuals reported having been harassed by police, compared with only 4 per cent of White transgender individuals.

V. Conclusions and recommendations

A. Conclusions

70. **The Working Group welcomes the ongoing work by the Government of Canada to revitalize efforts to address racial discrimination faced by people of African descent and to promote human rights, diversity and inclusion in partnership with African Canadian communities and civil society organizations. It also welcomes the important work of the national and provincial human rights institutions in investigating and referring complaints, reviewing legislation, monitoring and issuing recommendations to address systemic anti-Black racism.**

71. **The Working Group further welcomes the new federal initiative of appointing a judiciary that reflects the diversity of the country, encouraging applicants to self-identify on the basis of race, gender identity, indigenous status, sexual orientation and physical disability, and providing training in unconscious bias for committees that screen candidates so as to prevent rejection of good applicants from minority groups.**

72. **The Working Group welcomes the organization of events to celebrate the achievements and contributions of African Canadians, such as Black History Month and Lincoln Alexander Day. It notes the historical importance of the Africville community and museum as a site of memory in Nova Scotia and the specific focus on African Canadian history, experiences and social conditions at the Canadian Museum for Human Rights.**

73. **The Working Group also welcomes the establishment, in 2016, of the Anti-Racism Directorate to address systemic racism and promote fair practices and policies across the province of Ontario. It also notes with satisfaction that, following its visit, the Ontario Government adopted a number of measures for the benefit of African Canadians; it encourages other provinces to follow that example.**

74. **Despite the reputation for promoting multiculturalism and diversity and the positive measures taken by the national and provincial governments, referred to above, the Working Group is deeply concerned by the structural racism that lies at the core of many Canadian institutions and the systemic anti-Black racism that continues to have a negative impact on the human rights situation of African Canadians.**

75. **Canada's history of enslavement, racial segregation and marginalization of African Canadians has left a legacy of anti-Black racism and had a deleterious impact on people of African descent, which must be addressed in partnership with the affected communities.**

76. **Across Canada, many people of African descent continue to live in poverty and poor health, have low educational attainment and are overrepresented at all levels of the criminal justice system.**

[32] TransPULSE, Experiences of racism among trans people in Ontario, e-bulletin, vol. 3, No. 1 (March 2013).

77. There is a lack of race-based data and research that could inform prevention, intervention and strategies to protect the human rights of African Canadians.

78. The Working Group is particularly concerned about anti-Black racism and there is clear evidence that racial profiling is endemic in the strategies and practices used by law enforcement. Consumer racial profiling and the arbitrary use of "carding", or street checks, disproportionately affects people of African descent. The Working Group is concerned about excessive use of force and police-involved deaths, especially when responding to cases involving vulnerable people of African descent, such as those who are mentally ill or otherwise in crisis. It also is concerned that there is no race-based statistics of fatal police incidents involving persons of African descent.

79. The Working Group is extremely concerned about the practice and excessive use of segregation or solitary confinement in correctional facilities, the absence of appropriate monitoring and the lack of data on inmates' race, mental health status or gender. It noted that prisoners who asserted their rights were subject to reprisals by prison guards through disciplinary sanctions, including segregation. A freeze in the recruitment of correction officers in the past years has resulted in severe understaffing, which has led to the frequent use of lockdowns that has further curtailed the human rights of detainees, of which the majority are African Canadian.

80. The Working Group noted the disproportionately high unemployment rates among African Canadians, many of whom are forced to take low paying jobs with little security and poor prospects. African Canadian women find themselves entrenched in a cycle of poverty, with low levels of vocational and/or career advancement, lack of access to justice and deprived of the resources necessary to fully enjoy and participate in Canadian culture and life. African Canadian women and girls are reportedly targeted by the police and increasingly in contact with the criminal justice system as one of the fastest growing prison populations.

81. Many seasonal migrant workers of African descent are subjected to deplorable working conditions; they are exploited and are reportedly denied access to basic health services, and they are required to pay into Canadian social benefit programmes which they often cannot access, rendering their situation reminiscent of indentured labour.

82. African Canadians are disproportionately affected by race and health inequities that contribute to high rates of chronic disease.

B. Recommendations

83. The following recommendations are intended to assist Canada in its efforts to combat all forms of racism, racial discrimination, xenophobia, Afrophobia and related intolerance.

84. The Government of Canada should:

(a) Issue an apology and consider providing reparations to African Canadians for enslavement and historical injustices;

(b) Legally recognize African Canadians as a distinct group who have made and continue to make profound economic, political, social, cultural and spiritual contributions to Canadian society;

(c) Take concrete steps to preserve the history of enslavement and the political, social and economic contributions of African Canadians by establishing monuments in their honour;

(d) Ensure that textbooks and other educational materials accurately reflect historical facts as they relate to past tragedies and atrocities, in particular enslavement, to avoid negative stereotypes of people of African descent.

85. **The Government of Canada should:**

(a) **Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Rights of Persons with Disabilities; the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and the Inter-American Convention against All Forms of Discrimination and Intolerance;**

(b) **Create a national department of African Canadian affairs to represent the interest of African Canadians in the national Government and to research and develop policies to address issues facing African Canadians.**

86. **The Working Group recommends that a nation-wide mandatory policy on the collection of data disaggregated by race, colour, ethnic background, national origin and other identities be implemented to determine if and where racial disparities exist for African Canadians so as to address them accordingly.**

87. **The Government of Canada should review, in line with article 1 of the Convention on the Elimination of All Forms of Racial Discrimination, the implications of the use of the term "visible minority" so as to address more precisely the socioeconomic gaps and other disparities between different ethnic groups.**

88. **The Government of Canada should restore, fund and update the National Action Plan against Racism to comprehensively address anti-Black racism and human rights concerns of African Canadians.**

89. **The Working Group recommends that the Government of Canada:**

(a) **Develop and implement an African Canadian justice strategy to address the anti-Black racism and discrimination within the criminal justice system;**

(b) **Develop and implement a national corrections strategy to address and correct the disproportionately high rates of African Canadians in the correctional system and ensure anti-discriminatory and culturally specific services for African Canadian offenders;**

(c) **Develop a national diversity-awareness training plan for the federal and provincial correctional services and appoint an ethnicity liaison officer in each institution. Urgently increase the staffing of the correctional service and explore alternatives to lockdowns that will not result in the impairment of the human rights of detainees;**

(d) **Abolish the practice of segregation and solitary confinement and explore alternatives to imprisonment. Implement the recommendations made by the Ombudsman of Ontario in "The Code" with a view to ending the code of silence that exist among correctional officers and improve the processes for dealing with allegation of use of force.**

90. **The Working Group recommends that the practice of carding, or street checks, and all other forms of racial profiling be discontinued and that the practice of racial profiling be investigated and the perpetrators sanctioned. There must be a cultural change in law enforcement and greater respect for the African Canadian community.**

91. **The Government of Canada should:**

(a) **Implement the recommendations made by the Ombudsman of Ontario in his report entitled *A Matter of Life and Death* (see footnote 19);**

(b) **Implement the Committee on the Elimination of Racial Discrimination general recommendations No. 34 (2011) on racial discrimination against people of African descent and No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system;**

(c) Take the steps necessary to prevent arbitrary arrests, stops, searches and investigations and over-incarcerations of African Canadians;

(d) Provide training in unconscious bias to prosecutors, judges, lawyers, other judicial and police officers in the criminal justice system;

(e) Gather data on treatment of African Canadians in the criminal justice system;

(f) Conduct a study into the root causes of overrepresentation of African Canadians in the criminal justice system;

(g) Monitor the practices of police services through periodic external, independent audits;

(h) Increase the representation of people of African descent in law enforcement and correctional services and in the judiciary;

(i) Ensure that a psychiatrist or psychologist accompany police officers when responding to mental health calls.

92. The Government of Canada should adopt effective measures to address the root causes of overrepresentation of African-Canadian children in child care institutions. All efforts should be taken to keep the family together and alternatives to removing the child from his or her parents should be considered, including counselling and rehabilitation programmes for parents. Training for child welfare staff should include strengthening cultural competencies to serve African Canadian communities.

93. The Government of Canada should:

(a) Adopt an intersectionality framework to analyse and address the multiple forms of discrimination on the basis of race and other grounds that people of African descent face;

(b) Develop a comprehensive national gender equality policy to address structural factors such as anti-Black racism that lead to Black-gendered inequality faced by women of African descent;

(c) Ensure that oversight bodies for police departments and prisons include people of African descent as well as other vulnerable groups such as women, youth, persons with disabilities and lesbian, gay, bisexual, transgender persons in their composition.

94. The Government of Canada should:

(a) Systematically address employment disparity for African Canadians through the enactment of employment equity legislation. Long-term anti-poverty strategies should target the specific needs of African Canadians;

(b) Ensure inclusive policies, access to resources and access to information to help African Canadians create businesses that will enable economic self-sufficiency and create viable jobs. There must be targeted hiring policies for people of African descent similar to those for First Nations people. Develop a cultural competency programme for employers to raise awareness about equity and to support African Canadians presently employed and an incentive programme, such as tax breaks, for employers who hire African Canadians;

(c) Implement special measures for African Canadians in accordance with the Committee on the Elimination of Racial Discrimination general recommendations No. 34 (2011) on racial discrimination against people of African descent and No. 32 (2009) on the meaning and scope of special measures in the Convention with a view to fostering effective integration at the federal, provincial and territorial levels of African Canadians into Canadian society by effectively ensuring implementation of non-discrimination legislation and policies regarding access to employment, housing and public service. Strengthen special measures to increase the level of educational

attainment of African Canadian children, in particular by preventing their marginalization and reducing their dropout rates;

(d) **Implement a nationwide African Canadian education strategy to address the inordinately low educational attainment, high dropout rates, suspensions and expulsions experienced by African Canadian children and youth;**

(e) **Strengthen Afrocentric education curricula and implement the recommendations made by the Black Learners Advisory Committee in its report on education, *Redressing Inequity — Empowering Black Learners*, and accepted by the Nova Scotia Department of Education in its report, *Expanding from Equity Supports to Leadership and Results*. The provincial ministries should collect disaggregated data and ensure adequate remedies are available to African Canadian students impacted by discriminatory effects of disciplinary policies, including racial profiling.**

95. **The Government of Canada should:**

(a) **Address the urgent mental health crisis in the African Canadian community through a review of mental health legislation, operational priorities and guidelines. Establish a collaborative African Canadian mental health working group comprised of members of the African Canadian community, Government and institutional partners in housing, child welfare, health, criminal justice and service providers;**

(b) **Strengthen efforts to address HIV/AIDS and the related stigma in the African Canadian community.**

96. **The Government of Canada should:**

(a) **Encourage federal, provincial and municipal governments to seriously consider the concerns of African Nova Scotians and help to develop legislation on environmental issues affecting them. Urge the federal and provincial governments to consider adopting measures or developing legislation such as bill 111, an Act to Address Environmental Racism introduced in the Nova Scotia legislature in 2015;**

(b) **Provide funding and other resources to African Canadian community-based projects;**

(c) **Provide financial support for the implementation of the Land Title Clarification Act in Nova Scotia, which is aimed at resolving all outstanding land claim issues within historically Black communities. Amend the Act to respect the cultural traditions of African Nova Scotian communities.**

97. **The Government of Canada should make available pathways to residency and citizenship to seasonal workers to protect them from exploitation. Increase access to permanent residency and enable labour mobility by issuing open work permits, regulating employers, and ensure access to health services and adequate housing. Provide support, legal resources, community outreach and education to migrant workers on how to address concerns and disputes with employers particularly linked to modern-day slavery and other violations of their human rights.**

98. **The Working Group recommends that laws and counter-terrorism strategies which infringe upon the civil liberties, particularly of African Canadian Muslims, be repealed.**

99. **The Working Group recommends that the Government of Canada:**

(a) **Step up public discourse on the human rights of people of African descent and formally launch, at the national level, the International Decade for People of African Descent;**

(b) **Undertake impact-oriented activities in the framework of the International Decade for People of African Descent to bridge the existing gaps between policies and practice, including through the implementation of relevant recommendations for recognition and development of and justice for African Canadians. The International Decade for People of African Descent and the 150th**

anniversary of Canada present opportunities to highlight the achievements of African Canadians.

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Report of the Working Group of Experts on People of African Descent on its mission to Germany

Note by the Secretariat

The report transmitted herewith contains the findings of the Working Group of Experts on People of African Descent on its visit to Germany from 20 to 27 February 2017. In the report, the Working Group presents the current legal, institutional and policy framework and measures taken to prevent racism, racial discrimination, xenophobia, Afrophobia and related intolerance faced by people of African descent in Germany, underscoring positive developments as well as gaps in implementation. The Working Group describes the situation, highlights good practices and the main challenges identified, and makes concrete recommendations.

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Report of the Working Group of Experts on People of African Descent on its mission to Germany*

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* Circulated in the language of submission only.

I. Introduction

1. At the invitation of the Government of Germany, the Working Group of Experts on People of African Descent undertook a visit to Germany from 20 to 27 February 2017. The members of the delegation were Ricardo A. Sunga III (Chairperson), Mireille Fanon Mendès-France and Sabelo Gumedze (members of the Working Group).

2. During the visit, the Working Group assessed the human rights situation of people of African descent living in Germany, and gathered information on the forms of racism, racial discrimination, xenophobia, Afrophobia and related intolerance they face. The Working Group studied the official measures taken and mechanisms intended to prevent structural racial discrimination and protect victims of racism, as well as responses to multiple forms of discrimination according to the concept of intersectionality. The Working Group visited Berlin, Cologne, Dessau, Dresden, Düsseldorf, Frankfurt am Main, Hamburg and Wiesbaden.

3. The Working Group met representatives of several federal government ministries in Berlin, including the Foreign Office and the ministries of environment, family affairs, health, interior, justice and labour. It met representatives of the Federal Anti-Discrimination Agency, the Federal Office for Migration and Refugees and the Office of the Federal Commissioner for Migration, Refugees and Integration, as well as officials of the Federal Statistical Office and the National Agency for the Prevention of Torture, Wiesbaden. The Working Group also spoke to a member of parliament.

4. The Working Group met representatives of the Berlin State Office for Equal Treatment and Against Discrimination, the Commissioner of the Berlin Senate for Integration and Migration and the Berlin Police. The Working Group also visited the Plötzensee Juvenile Detention Centre in Berlin. In Dessau, it met officials of the Police Directorate of Saxony-Anhalt East, the public prosecutor-general of Saxony-Anhalt and officials working on integration programmes. In Dresden, the Working Group met officials of the State Chancellery of the State of Saxony and officials of the state ministries of social affairs and justice. In Frankfurt am Main, the Working Group met with the officials of the Anti-Discrimination Centre at the Office for Multicultural Affairs of the City of Frankfurt am Main, and Federal Police officials at the city's airport. In Düsseldorf, the Working Group met officials of the State of North Rhine-Westphalia and officials working in the areas of anti-discrimination, education, refugee affairs and integration. In Cologne, the Working Group met representatives of the Cologne Police. In all the cities that the Working Group visited, it also met a considerable number of Germans of African descent, as well as human rights activists, lawyers, academics and representatives of non-governmental organizations.

5. The Working Group thanks the Government for its invitation and the authorities in Berlin, Saxony-Anhalt, Saxony, Hesse, North Rhine-Westphalia and Hamburg for their support and cooperation during the visit. In particular, the Working Group thanks the Federal Foreign Office. The Working Group would also like to express its appreciation to the German Institute for Human Rights for its engagement and support. The Working Group warmly thanks the civil society steering committee led by the Kaneza Initiative for coordinating meetings with civil society in various parts of the country, and appreciates the feedback from all the people who shared their views on the human rights situation of people of African descent in the country.

II. Background: historical overview

6. The history of people of African descent in Germany goes back to the late seventeenth century. Enslaved Africans were uprooted from West Africa and brought to

Hamburg in ships in 1682.[1] Slavery was abolished by the late eighteenth century, and a unified German nation was established in 1871. In 1877, Nubians from the Sudan and Egypt were exhibited in Berlin and several other cities in Europe, perpetuating racial stereotypes.[2]

7. Germany's crimes against Africans and people of African descent are overshadowed by the country's focus on other parts of its history. The Berlin Africa conference in 1884, a meeting at which the major European powers negotiated and formalized claims to territory in Africa, had a devastating and lasting impact on the continent of Africa. The Ovaherero and Nama peoples were the primary victims of the 1904-1908 genocide in South-West Africa (now Namibia) by the German colonial authorities. Various historical accounts estimate that over 65,000 Ovaherero and 10,000 Nama were killed by the German authorities, including thousands who died of starvation and thirst after being driven into the desert without food or water. Many Ovaherero and Nama who survived the initial slaughter of their people died in the notorious concentration camps;[3] they were decapitated and their skulls were then sent to Germany at the request of medical researchers to help prove the racial superiority of white people over black people.[4]

8. The suffering of the Ovaherero and Nama peoples at the hands of the German authorities, also known as the "first genocide of the twentieth century",[5] has left an indelible mark on the souls of both victims and perpetrators. The colonial past of Germany, the genocide of the Ovaherero and Nama peoples and the sterilization, incarceration and murder of people of African descent under the Nazi regime in Germany are not addressed in the national narrative.

9. The presence of French African troops in the Rhineland following the First World War and of African-American soldiers in Germany following the Second World War both led to the birth of children of mixed race, who were also subjected to racial discrimination.

10. People of African descent in Germany informed the Working Group that they found the existence of street names and metro stations such as "Mohrenstrasse"[6] to be racist and insulting. Other street names still glorify personalities who played a key role in colonizing, enslaving and exploiting African people. Such naming of streets and metro stations indicates the persistence of structural racism and minimizes the crimes committed during the colonial period. The Working Group notes the positive change to one street name in Berlin, where the name of a colonialist was replaced by the name of a German woman of African descent, poet, educator, author, and activist May Ayim, following the mobilization of Afro-German civil society organizations.

11. According to Government estimates, there are some eight hundred thousand people of African descent in Germany (1 per cent of the population). This figure is based on the

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[1] Paulette Reed-Anderson, *Rewriting the Footnotes — Berlin and the African Diaspora* (Berlin, Ausländerbeauftragte des Senats, 2000), p. 8.

[2] Anne Dreesbach, "Colonial exhibitions, 'Völkerschauen' and the display of the 'other'", 3 May 2012. Available from http://ieg-ego.eu/en/threads/models-and-stereotypes/the-wild-and-the-civilized/anne-dreesbach-colonial-exhibitions-voelkerschauen-and-the-display-of-the-other.

[3] See E/CN.4/Sub.2/1985/6, p. 9. See also P. Fraenkel, *The Namibians* (London, Minority Rights Group, 1985); C.W. Erichsen, *"The Angel of Death has Descended Violently Among Them": Concentration Camps and Prisoners-of-War in Namibia, 1904-08* (Leiden, African Studies Centre, 2005). Available from https://openaccess.leidenuniv.nl/handle/1887/4646.

[4] N. Stafford, "German medical schools respond to claim they have stored Namibian skulls from colonial times", *British Medical Journal*, vol. 337 (2008); J. Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers* (Cape Town, University of Cape Town Press, 2011).

[5] George Steinmetz, "The first genocide of the 20th century and its postcolonial afterlives: Germany and the Namibian Ovaherero", *Journal of the International Institute*, vol. 12, No. 2 (2005). See also H. Melber, "Uncovering the 20th century's first genocide", *New African*, vol. 3, pp. 26-30. Available from https://www.researchgate.net/profile/Henning_Melber/publication/316167122_Uncovering_the_20th_century_first_genocide/links/58f49d96aca27289c21c8bf1/Uncovering-the-20th-century-first-genocide.

[6] German *Mohr*: Moor — an archaic term for a person of African descent, now considered offensive.

figure of six hundred thousand people recorded in official statistics as having foreign-born parents (second generation) or refugees or migrants with African nationality. Another 200,000 people have been added as an estimate of the number of German citizens who are of African descent but do not appear in the official statistics. Civil society sources estimate that the number of people of African descent in Germany is around 1 million. The use of the term "African migration background" does not account adequately for all people of African descent living in Germany. If the parents were born (in Germany) as foreigners, the third generation is covered by the definition "migrant background". The third generation cannot, however, be identified as being of African descent if the parents (second generation) were born as German citizens.[7] Civil society sources reported that the focus on African citizenship also rendered invisible the significant presence of members of the African diaspora from Brazil, France, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Caribbean and elsewhere. For historical reasons, the Government does not gather data or official statistics based on ethnicity or race; however, people of African descent are calling for equality data to be gathered, on the basis of self-identification, as an important step in addressing the racism they face. Social science research does include disaggregated data showing racial and ethnic background.

III. Legal framework and steps taken for the protection of the human rights of people of African descent

A. Legal framework

12. Germany has ratified all the major international human rights treaties, except the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

13. The protection of human rights and the prohibition of racial discrimination are enshrined in the German Basic Law (inter alia articles 1 and 3). Article 3 of the Basic Law declares that all persons shall be equal before the law and that no person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith or religious or political opinions. It further declares that no person shall be disfavoured because of disability.

14. Protection is also guaranteed under the General Equal Treatment Act (2006), which governs claims and legal consequences in the case of discrimination in private contracts. Section 1 of the Act states that its purpose is to prevent or stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. The Act also addresses the question of affirmative action in its section 5, entitled "Positive Action", which provides that unequal treatment shall only be permissible where suitable and appropriate measures are adopted to prevent or compensate for disadvantages arising on any of the grounds referred to under section 1. An important outcome of the General Equal Treatment Act was the creation of the independent Federal Anti-Discrimination Agency, which is administratively part of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.

15. The Working Group was informed that, while the federal structure of Germany has the virtue of allowing states to explore more progressive policies to protect and promote the rights of people of African descent, the autonomy of the states and of local government means that state laws may vary, and thus that people of African descent may enjoy different levels of protection of their rights, depending on the state in which they live. The Working Group did not receive any information about whether state parliaments deliberate and consider human rights obligations and recommendations emanating from international mechanisms.

[7] The group of people with a migration background consists of all persons who were born as foreigners or who have at least one parent who was born as a foreigner.

B. Institutional and policy measures

16. The Basic Law guarantees equality, prohibits racial discrimination and states that human dignity is inviolable. It is directly applied by German courts. Any person may file a constitutional complaint to the Constitutional Court, alleging that one of his or her basic rights or rights under article 20 (4) or articles 33, 38, 101, 103 or 104 of the Basic Law has been infringed by public authority (article 93 (4) (1) (4) (a) of the Basic Law). The Basic Law can, in principle, be invoked in court against public authorities. In practice, however, administrative courts only infrequently address Afrophobia and racial discrimination through the Basic Law.[8] The authorities informed the Working Group that this was because the application of federal or state law was sufficient to resolve the case in accordance with the Basic Law. Compensation cannot be obtained through the proceedings that address racial discrimination, which concern all kinds of claims for compensation against the state concerned.

17. In 2015, the Federal Ministry of Justice and Consumer Protection set up a task force on dealing with hate speech on the Internet in a sustainable and effective way, while also enhancing and expanding the various areas in which the task force members were already cooperating. The invitation to join the task force was accepted by Facebook, Google (for its video platform YouTube) and Twitter and by several civil society organizations.

18. The Working Group was informed about data on hate crimes collected by the Federal Ministry of the Interior, which include data on racism and racial violence. The data are disaggregated under four categories of politically motivated crime: right-wing politically motivated crimes, left-wing politically motivated crimes, politically motivated crimes of foreign ideology, and other politically motivated crimes. The Working Group learned that these categories include acts directed against a person because of his or her political opinion, nationality, ethnicity, race, skin colour, religion, belief, origin, disability, sexual orientation, outward appearance or social status. While the data show a steady increase in incidents of racism and racial violence, it is difficult to rely on these data alone, as they do not include cases in which the perpetrators are not politically motivated or have no organizational affiliation.

19. The scope of the General Equal Treatment Act is too narrow. It does not cover structural racism or racial discrimination committed by the State. It applies to civil law only. Accordingly, it excludes a wide array of racial discrimination committed by the State, such as racial profiling by the police or police violence against people of African descent. This limitation lessens the legal recourse available to people of African descent, particularly through the Federal Anti-Discrimination Agency established by the General Equal Treatment Act. The main mandate of the Federal Anti-Discrimination Agency is to receive complaints of discrimination on any of the grounds laid down in the General Equal Treatment Act. The Agency is then mandated to give independent assistance to complainants, by providing information on claims and possible legal action, arranging for advice to be provided by another authority and endeavouring to achieve an out-of-court settlement. The Agency therefore does not work as a complaint mechanism, as it is not empowered to bring about formal discrimination complaints against persons or institutions thought to have engaged in discriminatory behaviour.[9]

20. In 2015, an important amendment to article 46 of the German Criminal Code resulted in the courts, when determining a sentence, considering any racist, xenophobic or other inhuman motive as an aggravating circumstance. The Guidelines for Criminal Proceedings and Proceedngs to Impose a Regulatory Fine are supplementary administrative regulations for criminal proceedings and regulatory fines in Germany. The words "racist, xenophobic or other inhuman motives" have been inserted into numbers 15, 86 and 234 of those Guidelnes (corresponding to the new version of section 46 (2) of the German Criminal Code). Thus, Guideline No. 15 now explicitly stipulates that an

[8] See CERD/C/DEU/CO/19-22, para. 8.

[9] See A/HRC/14/43/Add.2, para. 20.

investigation must ascertain whether these motives were involved, as they constitute special circumstances for determining the legal consequences of an act.

21. Several initiatives are being undertaken at the federal and state levels to combat racism, racial discrimination, xenophobia and related intolerance. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Agency for Civic Education[10] have initiated pilot projects addressing group-related hate at the federal, state and local levels. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth started the federal programme "Live Democracy!" in 2015 (running until the end of 2019) with a budget of €104.5 million in 2017. As one part of this programme, 27 out of 96 pilot projects (dealing in general with selected phenomena of group-related hate and approaches to strengthening democracy in rural areas) were aimed specifically at the prevention of racism, including cooperation with civil society organizations, and some specifically in partnership with organizations working on the prevention of racism and empowerment of people of African descent. Additionally, "Live Democracy!" funds the structural development of a nationwide non-governmental organization (NGO) in the field of prevention of racism and empowerment of people of African descent. The Federal Agency for Civic Education has focused its efforts on young people, students, teachers and multipliers, inter alia through publications, workshops and online dossiers on combating racism. It offers additional knowledge and information materials about and for refugees. The Agency and two of its integrated operations ("Alliance for Democracy and Tolerance" and "Unity through Participation Programme") are encouraging communities, social organizations, sports clubs, schools and volunteers to fight extremism in a peaceful way and strengthen social engagement. The Agency cited the need to produce more multilingual products and more possibilities for people who have come from other countries to participate in such government work.

22. In developing the new National Action Plan against Racism, the Government consulted various NGOs, including the Forum against Racism and civil society organizations working for the rights of people of African descent. The Working Group was informed that the National Action Plan was formally unveiled by the Government on 14 June 2017, subsequent to the visit of the Working Group. This is a welcome development in relation to previous United Nations recommendations calling for such an action plan. The National Action Plan explicitly refers to increased efforts by Government in the fight against racial discrimination and the recognition of people of African descent, in view of the proclamation of the International Decade for People of African Descent. The National Action Plan also includes measures in the field of political education and research as well as awareness-raising in relation to the colonial past.

23. At the state level, the Berlin State Office for Equal Treatment and Against Discrimination has taken the lead in initiatives to combat racial discrimination and has joined the European Cities Against Racism project. The State of Berlin is pursuing the development of the Local Action Plan against Racism and Ethnic Discrimination. The Government informed the Working Group that, unfortunately, the process had failed because of a lack of financial resources. The Anti-Discrimination Centre in Frankfurt am Main receives individual complaints, including complaints of incidents of racial discrimination allegedly perpetrated by the authorities, through its hotline services.

24. The German Institute for Human Rights is an independent national human rights institution. It is accredited under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) with an "A" status. The Institute's tasks include policy advice, human rights education, information and documentation, applied research into human rights issues and cooperation with international organizations. The Institute produces advisory reports to the Government and the parliament, but does not handle individual complaints.

[10] In Germany, education is the responsibility of the states. The Federal Agency for Civic Education, under the Ministry of the Interior, deals only with the promotion among citizens of understanding of political issues, awareness of democracy and willingness to participate in political processes. See www.bpb.de/die-bpb/138852/federal-agency-for-civic-education.

IV. Manifestations of racial discrimination

A. Criminal justice system, representation, negative stereotypes and media

25. The Working Group found that racial profiling by police officials is endemic. Civil society sources reported that stops, identification checks, searches and other controls by police are usually targeted at minority groups, including people of African descent. Boys and young men experience day-to-day confrontation with law enforcement officials, with a high risk of imprisonment. The Government informed the Working Group that cases of racial profiling (defined as unjustified targeting of people by police measures only or mainly because of their race, ethnicity, etc.) were being investigated and prosecuted. However, the lack of an independent complaint mechanism at the federal level fosters impunity, with no redress for victims. The Government informed the Working Group that independent complaint mechanisms existed at the state level in some states. However, while mechanisms may exist in some states, the lack of information about them hinders access to these mechanisms. During its visit the Working Group heard testimonies about, and civil society organizations continue to report, discriminatory identity checks by police on members of ethnic and religious minorities.[11]

26. Under section 22 (1) (a) of the Federal Police Act, for the purpose of controlling immigration the Federal Police may stop, question and demand identity documents from, and inspect objects in the possession of, any person in railway stations, trains and airports.[12] The practice results in "unchangeable external characteristics" serving as a criterion that triggers suspicion, and thus race becomes a selection criterion for carrying out checks.[13]

27. Civil society sources in Berlin reported that a state law enables state police to classify certain areas as "dangerous places", thereby establishing a spatial zone where stop-and-search identity checks are allowed, even if the individual concerned has not given cause for suspicion, and infringing upon freedom of movement. These are often areas where large numbers of racialized people, including people of African descent, work and live.

28. The Working Group is particularly concerned by the failure by the State, in particular by the police, to investigate effectively and provide justice in cases of racial discrimination and violence against people of African descent. One example is the case of Oury Jalloh, an African asylum seeker, who died in a fire in a police cell in Dessau in 2005 while his hands and feet were cuffed. There are concerns about racial bias in his arrest, ill-treatment by the police, the use of physical restraint and gaps in the investigation into the cause of his death. The case was examined by the courts and a criminal trial ended with a minor conviction. There has been no independent inquiry, and the length of time that has elapsed without a conclusive decision has added further doubt about accountability measures in the criminal justice system. The Working Group believes that institutional racism and racist stereotyping by the criminal justice system has led to a failure to investigate and prosecute perpetrators effectively. The Working Group is also concerned about harassment of human rights defenders who are trying to seek truth and justice in this case.

29. The Working Group was also informed about other cases: Ousman Sey, who died in police custody in 2012 in Dortmund; Christy Schwundeck, who was shot by police in a job centre in Frankfurt am Main in 2011; Slieman Hamade, who died while he was being arrested and restrained in Berlin in 2010; Maria El-Sherbini, a young North African woman, who was stabbed to death in the high court in Dresden in front of her 3-year-old

[11] Amnesty International, *Amnesty International Report 2016/17: The State of the World's Human Rights* (London, 2017), pp. 166-168.

[12] See parallel report by the German Institute for Human Rights to the Committee on the Elimination of Racial Discrimination in the context of the latter's examination of the combined nineteenth to twenty-second periodic reports of Germany. Available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fIFN%2fDEU%2f20058&Lang=en.

[13] Ibid., p. 11.

son and the judge in June 2009; Mohammed Sillah, who died in custody in Remscheid (North Rhine-Westphalia) in 2007; Dominique Koumadio, who was shot and killed by law enforcement officials in Dortmund in 2006; Laye-Alama Condé, who died in custody in Bremen in 2004; Achidi John, who died in judicial custody after being detained in 2001 in Bremen; Amir Ageeb, who died while being deported from Frankfurt am Main in 1999; and N'deye Mariame Sarr, who was shot by police officers when she went to pick up her child from her white ex-husband in 2001. This list of incidents, albeit non-exhaustive, provides indicative examples of serious human rights violations, excessive use of force by law enforcement officials and impunity.

30. The Working Group was also concerned by the failure to protect people of African descent from hate crimes. The Working Group learned that people of African descent are frequently targeted and attacked by right-wing extremists.

31. The Working Group was also concerned by the reported degradation, humiliation and discriminatory treatment faced by young asylum seekers of African descent during the forced medical determination of age by the authorities while they are in pretrial detention. The Working Group heard from several young people in the Plötzensee Juvenile Detention Centre that, even though they had passports and birth certificates, they were forced into shackles, taken from the detention centre to the hospital and forced to remove all clothing and undergo an X-ray examination. They were not provided with any information or the result of the examination. These tests cannot be said to be 100 per cent accurate and are conducted without the young people's consent. Another concern was the lack of access to legal aid. The Working Group learned that, at a youth detention centre, meals are served only once a day, thus depriving detainees of breakfast in the morning and dinner in the evening. This practice is followed without the young people's consent and without taking into account their best interests.

32. Civil society sources reported that youth protection services were often prejudiced towards people of African descent, some of whom were forced to give up custody of their children on very weak assumptions. In many instances, young children are arbitrarily sent to State-run group homes, which often results in traumatization, tearing apart of family structures and estrangement of families. Families are then given very restricted access to their children, which perpetuates the traumatization. In addition, children of African descent left in State-run centres suffer from everyday racism.

33. The European Commission against Racism and Intolerance, in its monitoring report on Germany, pointed out the high rate of underreporting of offences involving racism, reflecting a lack of confidence on the part of vulnerable groups in the effectiveness of criminal proceedings brought by the police and the prosecution services. It added that a racist motivation was recognized in only a small number of judgments.[14] Both the German Institute for Human Rights and the European Commission against Racism and Intolerance regard the failure to solve the racially motivated murders and attacks perpetrated from 1998 to 2007 by the Nationalist Socialist Underground and documented by committees of inquiry as an indicator of systemic shortcomings in the handling of racially motivated crimes in Germany.

34. The Working Group was concerned by the lack of representation of people of African descent in law enforcement. For example, the Cologne Police informed the Working Group that there was only one person of African descent in its police force of 4,800, and readily acknowledged the need to increase diversity.

35. The federal parliament currently has two members of African descent, and there are some elected officials of African descent at the state and community levels across Germany. The lack of representation of people of African descent in government and politics means that their issues are not taken up in national political dialogue.

36. Civil society sources reported that some mass media encouraged stereotyping of people of African descent, with minimal reporting on the positive contributions that the

[14] European Commission against Racism and Intolerance, *ECRI Report on Germany* (Strasbourg, 25 February 2014), p. 9.

latter have made in various spheres — not only in sports and entertainment. At the same time, civil society sources also called for greater sensitivity in the mass media on issues of discrimination and racism. They called for more publicity about the injustices of exclusion instead of sensationalized stories, and for more promotion of the need for equal opportunity in society, with a recognition of people of African descent as a distinct group of people who are especially susceptible to racism and discrimination.

B. Disparities in access to education, health, housing and employment

37. People of African descent also face racial discrimination in the area of economic, social and cultural rights. However, data specific to people of African descent without a migrant background are not readily available. Data provided by the Federal Statistical Office showed that a high percentage (44.3 per cent) of "people of African descent with migrant background" were at risk of poverty, which is nearly three times the national mean of 15.7 per cent. Their monthly net income (€1,456) was almost 25 per cent less than the national mean monthly net income (€1,921).[15]

38. The Working Group is concerned about the educational outcomes of children of African descent in Germany. According to civil society sources, children of African descent are increasingly recommended by teachers to follow educational paths that reduce their opportunities for higher education. In the past, Germany had a three-tier education system. After primary school, students attended either the highest level of school, which prepared students for university studies, the intermediate level of school or the lowest level of school, which prepared children for work or vocational training. Reform initiatives were undertaken and implemented in several states, according to the specific requirements of each state, resulting in a more diversified system. However, equal opportunity, including equal access to higher education and professional training, has still not been achieved, even in the new types of school.[16] The Working Group noted the disproportionate dropout rate in schools, with learners from migrant backgrounds being twice as likely to drop out as those not from a migrant background.

39. The historical facts concerning the period of colonization, the transatlantic trade in Africans, enslavement and the genocide of the Ovaherero and the Nama peoples are not sufficiently covered in all schools. The curricula in some states fail adequately to address the root causes of racial inequality and injustice. This has also contributed to the structural invisibility of people of African descent in Germany.

40. Civil society sources reported the lack of teachers of African descent compared with the increasing numbers of students of African descent in schools. Similarly, reports were received about the lack of recognition and accreditation of university degrees obtained in African countries, which meant that people of African descent were compelled to take up jobs at a lower level than their academic qualifications warranted. Failing to get the necessary permits, or getting only partial information about the duration of the permit, means that the potential employee cannot access some contractual employment.

41. While the Basic Law guarantees respect for the human dignity of all, undocumented migrants face numerous legal and practical obstacles in upholding their human rights in Germany. The Working Group was informed that undocumented workers were at high risk of exploitation and that, if undocumented migrants went to school or to a hospital, they risked being found out and deported.

42. People of African descent continue to be underrepresented in management positions and they are often on the lowest rungs of Germany society. They end up with the jobs

[15] Further information available from http://www.destatis.de/.

[16] Academic Democratic and Forum Menschenrechte, "Racial discrimination in Germany: manifestations and human rights obligations to protect individuals and groups against racial discrimination" (parallel report submitted to the Committee on the Elimination of Racial Discrimination in the context of the latter's examination of the combined nineteenth to twenty-second periodic reports of Germany) (Berlin, 2015), p. 37.

which nobody else wants. Civil society sources reported that racial discrimination on the job market began when employers lost interest upon reading a foreign name, making it very difficult to get into formal employment, despite the individual's (certified) qualifications. Civil society sources reported instances of differential treatment faced by people of African descent, with disproportionately lower remuneration for work done in comparison with others. People of African descent are driven into poverty, which forces them into depression and brings a serious risk of mental health issues. Civil society sources also reported experiences of racial discrimination by medical doctors or nurses against patients, with stereotypical inferences being drawn from the patient's complaints.

43. The Working Group is concerned about discrimination in the form of decision-making by property owners on the basis of an individual's name and appearance.[17] Competition for rented housing among low-earning and middle-income families has given considerable latitude to property owners in selecting their tenants. The Working Group noted that, under section 19 (3) of the General Equal Treatment Act, property owners can refuse to rent apartments to persons applying for accommodation, with a view to creating and maintaining socially stable residential structures, balanced housing estates or balanced economic, social and cultural conditions.

44. Civil society sources reported that demographic change, reurbanization and a policy of keeping interest rates low aggravate the situation in the already tense housing markets of large cities, such as Berlin or Hamburg, narrowing housing options for various groups in the population, from the poor to the middle class. This means that low earners must compete with those on middle incomes for affordable housing, leaving the property owners and other so-called gatekeepers of the housing market (housing companies, housing cooperatives, etc.) with a wide range of potential tenants to choose from. Various surveys have shown that people of African descent are likely to be discriminated against in this decision process.[18]

C. Multiple forms of discrimination

45. The Working Group studied the intersectionality of the different forms of discrimination faced by people of African descent and heard experiences of racial discrimination based on ethnicity, religion, socioeconomic status, age and gender identity. Civil society sources reported the competing policies of integration versus assimilation, and struggles faced by people in preserving their cultural identity and freedom of religion and cultural expression.

46. Muslims of African descent are a racial and religious minority in Germany and are facing increasingly difficult times in the enjoyment of their rights, because of increased Islamophobia and Afrophobia. Muslim women of African descent face further discrimination when it comes to access to the labour market. Many Muslim students of African descent describe their experiences in school as traumatic, as they experience not only racism because of their African descent, but also anti-Muslim racism.

V. Conclusions and recommendations

A. Conclusions

47. **As a result of the Second World War, Germany has a heightened awareness of the importance of combating right-wing extremism and racism, particularly against**

[17] This practice is exemplified by the case of a couple of African descent who were denied the right to view an apartment, on the grounds that the apartment could not be rented to people of African descent. See the subsequent court decision: www.justiz.nrw.de/nrwe/olgs/koeln/j2010/24_U_51_09urteil20100119.html.

[18] See www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/Expertise_Wohnungsmarkt_20150615.pdf?__blob=publicationFile.

previously discriminated groups such as Jews, Roma and Sinti. People of African descent have not been recognized as a significant minority, deserving specific action, within the German population. With the philosophy of equal opportunity for all, there have been no specific programmes for people of African descent as a particular victim group.

49. The Working Group welcomes the efforts by the federal Government and state governments to address racial discrimination faced by people of African descent and the country's large intake of asylum seekers and refugees. In 2015 and 2016 combined, there were more than 1.2 million first-time registered asylum seekers.

50. Awareness of the issue of structural racial discrimination targeting people of African descent has grown, thanks to a vocal civil society. The launch of the International Decade for People of African Descent in Germany and the coalition agreements between states, which recognize people of African descent as a particular victim group, are important steps in the path to recognition. The Working Group welcomes the important work of the German Institute for Human Rights, the federal and state-level anti-discrimination agencies, the National Agency for the Prevention of Torture and the Federal Agency for Civic Education.

51. The Working Group welcomes funding support for civil society organizations, such as the programme of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth entitled "Live Democracy!" and its thematic focus on prevention of racism and empowerment of people of African descent.

52. The Working Group welcomes the adoption of the amendment to section 46 of the Criminal Code requiring that racist motivation be taken into account as a specific aggravating circumstance in sentencing offenders.

53. Despite Germany's promotion of multiculturalism and diversity, and the positive measures referred to above, the Working Group is deeply concerned about the human rights situation of people of African descent in Germany. While people of African descent are a diverse group, their daily lives are marked by racism, negative stereotypes and structural racism. They are targeted and are victims of racist violence and hate crimes. They fear for their safety and avoid certain places as they believe they will be attacked. They are subjected to racial discrimination by their classmates, teachers and workmates and to structural racism by the Government and criminal justice system. In Germany, negative stereotypes of people of African descent remain commonplace. These stereotypes lead to misguided and misinformed perceptions of people of African descent. Despite the gravity of the situation, they are not officially recognized as a group particularly exposed to racism.

54. The Working Group notes that the Government of Germany has apologized for the genocide of the Ovaherero and Nama peoples and is conducting targeted development projects in Namibia. The Working Group regrets that the Government of Germany has thus far not consulted seriously with the lawful representatives of the minority and indigenous victims of that genocide to discuss reparations.

55. The Working Group welcomes the initiative by the district authority of Berlin-Mitte and a selected jury composed of a majority of people of African descent, who are currently working on the extensive renaming of streets in the federal capital connected with German colonialism.

56. People of African descent remain structurally invisible. As long as a person is discriminated against, whatever the reason, a State is not free from structural racism. Official statistics are only available for foreign-born people or those with parents born abroad and for African refugees and migrants. People of African descent are collectively grouped under the all-embracing concept of "people from a migrant background", thereby rendering invisible German citizens of African descent beyond the second generation. This approach does not specifically address the challenges faced by people of African descent in Germany, and indeed reflects the general lack of attention paid to their socioeconomic and political welfare.

58. Despite the wealth of data relating to socioeconomic indicators, there is a serious lack of race-based data and research that could inform policy to improve the situation of people of African descent. The Federal Statistical Office has recently enlarged its microcensus to include indicators such as the language(s) spoken in a household. However, the lack of disaggregated data on people of African descent without a migrant background obscures the magnitude of structural and institutional racism that they face.

59. Civil society sources have stated that research in African studies by German academics could, and should, play an eminent role in the analysis of the causal chains that seem to perpetuate racism and racial discrimination towards people of African descent and in highlighting the deficiencies of strategies for containing these social ills that have proved to be ineffective in the past. The situation of people of African descent is currently treated in the context of postcolonial studies, which aim to identify the colonial roots of the persisting discrimination and unbalanced power relations, for example as manifested in language, but not to improve these relations.

60. The Working Group noted that a 10-point plan on returns was being discussed by the Government. The Working Group is concerned that it includes swift deportations for anyone deemed a security risk, increased use of data-sharing for "security reasons" (including medical data) and access to social media accounts and/or mobile telephones as necessary measures to mitigate against potential security risks.

61. The Working Group is also concerned about possible deportations of people of African descent to Libya, given the reports of serious human rights violations in that country, targeting Africans from other countries. In the current scenario of elections scheduled for 2017 and the rise of far-right political parties, the Government informed the Working Group that it was committed to an organized refugee process, while maintaining a political balance between protection of the rights of asylum seekers and refugees and acceptance by the host population.

62. The following recommendations are intended to assist Germany in its efforts to combat all forms of racism, racial discrimination, Afrophobia, xenophobia and related intolerance.

B. Recommendations

63. Germany should recall its role in the history of colonization, enslavement, exploitation and genocide of Africans, and should make reparations to address the continued impact of those acts. The Herero and Nama people must be included in the negotiations currently ongoing between the Governments of Germany and Namibia. The Working Group emphasizes that the history of racism in Europe should also be understood through an analysis of the events preceding the Second World War, taking into account the correct sequence of historical events.

64. Data should be disaggregated on the basis of ethnic origin and other grounds in order to identify discrimination and gaps so they can be addressed. Modalities for the collection of data on discrimination and equal treatment should be developed in consultation with people of African descent and other groups requiring protection. To this end, a nationwide mandatory disaggregated data collection policy should be implemented, based on ethnic background, national origin and other identities, in order to determine whether, and where, racial disparities exist for people of African descent and address them effectively.

65. The Government of Germany should commission and publish a study on the human rights situation of people of African descent, prepared by people of African descent, based on data gathered on a voluntary basis of self-identification.

66. The Government should fund African organizations working for people of African descent in all states of Germany, so that they can document the human rights

situation of people of African descent in the country and provide necessary services to their community, including funding for Afro-German youth organizations.

65. **The Government should take measures to protect whistle-blowers within institutions, so they can speak up about incidents of racial discrimination and violations of the law without fear.**

66. **People of African descent in Germany should be legally recognized by the Government as a minority group that has made and continues to make profound economic, political, social and cultural contributions to Germany.**

67. **The Working Group recommends the use of the term "Afrophobia" to describe the unique and specific form of racial discrimination affecting people of African descent and the African diaspora.**

68. **In consultation with people of African descent, the Government should find ways to create memorials to honour people of African descent and African victims of historic tragedies. Street names that are insulting to people of African descent should be replaced with names that honour people of African descent.**

69. **Germany should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

70. **The Working Group recommends that the Government adopt measures to respect the rights of people of African descent in accordance with article 1 of the Basic Law, harmonize German laws with the International Convention on the Elimination of All Forms of Racial Discrimination, formulate a definition of racial discrimination in accordance with article 1 of that Convention and review and amend all laws and regulations that lead to de facto racial discrimination, such as the Federal Police Act.**

71. **The Working Group recommends the expansion of the mandate of the German Institute for Human Rights to include the reception of complaints of human rights violations committed by agents of the State.**

72. **The Working Group also recommends that domestic legislation to combat racism, racial discrimination, xenophobia and related intolerance take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the outcome document of the Durban Review Conference, held in Geneva in April 2009.**

73. **The Working Group recommends the creation of a national institution to represent the interests of people of African descent in Germany and research and develop policies to address issues faced by people of African descent.**

74. **The General Equal Treatment Act should be amended to include more broadly within its scope structural racial discrimination committed by the State, as well as that committed by individuals.**

75. **The Working Group recommends that, in the implementation of the National Action Plan against Racism, the Government should focus on eliminating structural racial discrimination in all spheres, including education, politics and institutions of the Government, through legislative reforms, accountability and enforcement of anti-discrimination legislation. The Government should ensure that the National Action Plan includes a specific focus on people of African descent as a group requiring targeted support. The Government should also assess the extent to which the National Action Plan implements the Durban Declaration and Programme of Action at the national level.**

76. **The Working Group calls upon the Government to establish an independent inquiry, with inclusion of the Oury Jalloh Initiative, into the case of Oury Jalloh in order to investigate events that led to Mr. Jalloh's death in custody, identify and prosecute those responsible and investigate those who have harassed and intimidated the human rights defenders seeking justice in this case.**

77. **The Working Group also urges the State to undertake measures to ensure that anyone requiring medical and psychiatric treatment is treated with dignity and provided with appropriate treatment in a medical facility.**

78. **The Working Group calls for an end to criminalization of men of African descent and for effective action against and cessation of any practice of racial profiling by federal and state law enforcement officials. Actions might include:**

(a) **Amending or repealing section 22 (1) of the Federal Police Act and legally prohibiting discriminatory profiling;**

(b) **Establishing independent complaints mechanisms at both the federal and state levels to investigate acts of racial discrimination committed by law enforcement officials;**

(c) **Adopting a comprehensive training strategy and vetting system for application during recruitment and throughout the career of law enforcement officials to ensure that law enforcement tasks are performed without racial profiling or any other methods leading to racial discrimination; prosecutors and judges should receive specialized training in the identification and characterization of racist hate crimes.**

79. **The Government should undertake prompt, thorough and independent investigations into all allegations of racial profiling, hold those responsible accountable and provide effective remedies, including compensation and guarantees of non-repetition. It should also conduct monitoring through periodic external, independent audits of the practices of police services.**

80. **The Working Group echoes the call of the Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance for a limitation of the discretionary powers of law enforcement agents in order to reduce the risk of racial and ethnic profiling. There are several approaches to limiting discretion; they are not mutually exclusive but can be used in a complementary manner. Such strategies may include improving the quality and precision of intelligence-gathering and making sure that law enforcement agents use this information in their decision-making, increasing the supervision of law enforcement officers' discretionary decisions, and enhancing civilians' understanding of their rights and responsibilities in encounters with law enforcement agents and the ways in which these agents may be held accountable. Similarly, civilian monitors, civil society actors and international organizations should be given the necessary access to monitor effectively the checks and controls in place in the different types of law enforcement agency.**

81. **The Working Group recommends that the Government should increase the representation of people of African descent in law enforcement and correctional services.**

82. **The Government should implement recommendations of the National Agency for the Prevention of Torture at the federal and state levels.**

83. **The Government should adopt an intersectionality framework to analyse and address the multiple forms of discrimination on gender, race, religion and other grounds.**

84. **The Government should undertake a review to ensure that textbooks and other educational materials reflect historical facts accurately as they relate to past tragedies and atrocities.**

85. **The Government should take measures to address racial discrimination in education and prevent children of African descent from being assigned to lower tracks in a tiered education system, thereby preventing the children from acquiring a university education; and ensure that diplomas obtained abroad, particularly outside the European Union, are properly recognized so that the holders of such diplomas may present themselves on the job market on a competitive basis.**

86. **Educators of African descent should be appointed to the commissions of the boards of education that are responsible for the development and design of school curricula and their contents, in each subject and in each state.**

87. **The Government should seek an amendment to the General Equal Treatment Act in order to eliminate the exception granted to property owners which allows them to discriminate in order to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions. While this provision may have been created to promote integration, its broad nature can be detrimental to such efforts by allowing discrimination to occur.**

88. **The Government should ensure that people of African descent are actively recruited to State institutions in order to create a diverse workforce to represent the population of Germany and combat structural racism.**

89. **The Government should provide specific education and training for people of African descent so that they can obtain better job opportunities. The possibility of affirmative action by way of job quotas should also be explored. These opportunities should open up not just the public sector, but also the private sector.**

90. **The Government should consider granting migrants the right to vote in local elections, thus improving the representation of migrant communities in city councils and other municipal bodies.**

91. **German laws must be aligned with international human rights law in order to respect asylum seekers' human rights, including their right to health in all states. The State should ensure that the human rights of migrant workers, including those who are undocumented, are respected, as guaranteed by international human rights law. Pathways must be created to enable undocumented workers to convert their status into that of a documented worker. These pathways should lead to residency and, in due course, to citizenship.**

92. **The German media are encouraged to write positive stories on people of African descent who contribute to contemporary German society.**

93. **The Working Group encourages the Government to undertake impact-oriented activities in the framework of the International Decade for People of African Descent (2015-2024) at the federal and state levels and to bridge the existing gaps between policies and practice, including through the implementation of relevant recommendations for recognition, justice and development of people of African descent in Germany. The International Decade for People of African Descent presents opportunities to showcase achievements in this regard.**